

BEFORE THE SUMMIT COUNTY
HUMAN RESOURCE COMMISSION

- - -

In Re: EMPLOYEE APPEAL)
OF DAVID McCANN)
) No. 0601

Transcript of proceedings in above-captioned
matter, held before Lisa Miller, Hearing Officer, taken
before me, the undersigned, Leanne Garro, a Stenographic
Reporter and Notary Public in and for the State of Ohio,
at the Ohio Building, 8th Floor Conference Room, 175
South Main Street, Akron, Ohio, on Wednesday, the 12th
day of July, 2006, at 9:03 o'clock, a.m.

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1 APPEARANCES:

2 On behalf of Summit County

3

4 By: Kasie L. Briggs, Attorney at Law,
5 Ohio Building, 8th Floor,
6 175 South Main Street,
7 Akron, Ohio 44308.

8 (330) 643-2545

9 On behalf of the Center For Families & Children

10 Thompson, Hine

11 By: James L. DeFeo, Attorney at Law,
12 3900 Key Center,
13 127 Public Square,
14 Cleveland, Ohio 44114-1291.

15 (216) 566-5622

16 On behalf of David McCann

17 By: Pro Se

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P R O C E E D I N G S

MS. MILLER: All right. We're ready to go.

I have an e-mail from Dave sent to Janis asking to recall Renee Dornack. Do you have any --

MS. BRIGGS: I object. He's already had the opportunity to question her. We've had how many witnesses come through here, and we've got how many more witnesses coming through here today and we're going to start recalling people?

I just have to note the county's objection for the record.

MS. MILLER: What's the purpose?

MR. McCANN: The purpose is a further elaboration on comments that she made that I think are very important to answering the questions that were featured on my referral to the Employees Assistance Program that you, as the hearing officer, want answered, and I think it's very important that she have the opportunity to come back to further elaborate on those.

MS. MILLER: Okay. We'll go through the

1 rest of the witnesses today and I'll rule on
2 this later.

3 MR. McCANN: That's fine.

4 MS. MILLER: Janis, if you want to get
5 the first person in.

6 - - -

7 SHANNON LYSENKO

8 of lawful age, a Witness herein, having been first duly
9 sworn, as hereinafter certified, testified and said as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. McCANN:

13 Q Would you, please, state your name, spelling your
14 last name and your position with Summit County?
15 A Shannon Lysenko, L-y-s-e-n-k-o. I'm a clerk of
16 board of control and purchasing specialist and
17 before you have any questions, I do have a
18 statement to make.

19 Dave McCann is the only person that I know
20 who can effectively control his anger. I've seen
21 him many times over the last six years have irate
22 phone calls, crazy people calling him and he is so
23 polite and he is very effective in getting his
24 point across.

25 He hangs up the phone. What he always does

1 is takes a deep breath, goes for a walk then he
2 comes back and everything's fine, so he should be
3 teaching anger management classes rather than
4 going to them, and I don't know of anyone else who
5 has ever been referred to anger management in the
6 county or even the executive office, though I
7 really don't think that raising your voice or
8 disagreeing with a supervisor warrants anger
9 management and I think that's inconsistent.

10 That's it.

11 Q Thank you, Shannon.

12 You sat next to me for a period of six
13 years; is that correct?

14 A Yes.

15 Q In his testimony of Monday, July 10th, Director
16 Richard Strain in answer to the question were
17 certain directors in the Ohio Building adverse to
18 purchase required software for their computers and
19 Mr. Strain answered yes, there were certain
20 directors who were adverse to purchasing required
21 software for their computers.

22 Now, the director of communications, Jill
23 Skapin claims to have had an issue or as it is
24 stated on the anger management referral, an
25 exchange with me regarding a piece of software, in

1 this case, the Adobe Professional Software; is
2 that correct?

3 A Yes.

4 Q I'd like for the record, please, to read a letter
5 that Ms. Lysenko prepared. Very interestingly,
6 this was unsolicited, written on George
7 Washington's birthday, February 22nd, 2006,
8 certainly in keeping with the writer, Parson
9 Weems', notation of George Washington who never
10 told a lie, I would also note that Ms. Lysenko is
11 the daughter of a respected jurist in this county.

12 MS. MILLER: Before you go, regarding the
13 question he asked you about Jill Skapin, how
14 do you have personal knowledge that she did
15 not want to do that?

16 MR. McCANN: The letter --

17 MS. MILLER: I'm asking her.

18 MR. McCANN: Oh, I understand, but --

19 MS. MILLER: No, wait. I'm asking her a
20 follow-up question.

21 MR. McCANN: Isn't that a --

22 THE WITNESS: What was the question?

23 MS. MILLER: I'm asking a follow-up
24 question.

25 MR. McCANN: Isn't that up to opposition,

1 Counselor? You're the hearing officer.

2 MS. MILLER: I am asking a follow-up
3 question.

4 THE WITNESS: What is your follow-up
5 question?

6 MS. MILLER: How do you have personal
7 knowledge that she did not want to purchase
8 the software?

9 THE WITNESS: I don't think she would
10 have called and had been angry. That was
11 the reason for her phone call.

12 MS. MILLER: Did she call you and was
13 angry?

14 THE WITNESS: No, she did not call me.

15 MS. MILLER: Okay. So how do you have
16 personal knowledge that she was angry about
17 whatever?

18 MR. McCANN: I object to this line of
19 questioning.

20 A, you are to be as the hearing officer
21 certainly not an advocate of either side,
22 whether it be me or the administration. I
23 would welcome the question from opposition
24 counselor if that's the direction you want
25 to go, but in your position as chair of this

1 Human Resource Commission, I don't think
2 it's appropriate. If Counselor Briggs would
3 like to pursue it, I would respect that.

4 MS. BRIGGS: I can ask the question, but
5 I'll have you know that Lisa as the hearing
6 officer has asked many witnesses questions,
7 follow-up questions, to something that she
8 doesn't understand, so it's not like she's
9 being an advocate for anyone.

10 MR. McCANN: In retrospect and in
11 thinking about that as all of us have
12 thought about the previous hearing from
13 Monday, I'm sure there's many questions that
14 come to our mind in terms of the decorum of
15 this hearing.

16 Now, I would welcome your questions and
17 would offer objections, but for a hearing
18 officer to play advocate for either the
19 administration or for myself is not
20 acceptable.

21 MS. BRIGGS: Well, again, I don't think
22 she's being an advocate and I don't have any
23 follow-up questions related to that
24 question. I think it's been established
25 that Ms. Lysenko has no personal knowledge

1 of the question she answered.

2 MS. MILLER: Overruled. Ever since I've
3 been a hearing officer here, I ask questions
4 of witnesses. I've done it in every hearing
5 that I've ever had here. That's -- my job
6 is to find out the facts, that's my job.
7 This isn't a court of law. I'm permitted to
8 ask questions. Those aren't in the rules.
9 I'm allowed to try to find out what is
10 happening. That's my job.

11 MR. McCANN: And that's my job as well if
12 I am permitted to read this letter.

13 MS. MILLER: All right. You will be when
14 I'm finished with the question. Do you
15 understand that?

16 MR. McCANN: No, I don't.

17 MS. MILLER: Okay. Well, then, you just
18 need to be quiet until I'm finished asking a
19 question.

20 MR. McCANN: I object, and I will be
21 quiet.

22 MS. MILLER: How did you find out about
23 this? Did you -- were you there when it
24 happened? Did you observe him on the phone
25 with her?

1 THE WITNESS: Yes.

2 MS. MILLER: Okay. So you were there.
3 You heard his end of the conversation?

4 THE WITNESS: Yes, that's correct.

5 MS. MILLER: Okay. That's what I was
6 trying to establish.

7 THE WITNESS: That's correct.

8 MR. McCANN: Am I permitted now to read
9 the letter?

10 MS. MILLER: Yes.

11 MR. McCANN: Dated February 22nd, 2006,
12 Several weeks ago, David McCann was on the
13 phone with Jill Skapin and was talking to
14 her about software that was on her computer
15 that was not purchased through the
16 purchasing department or approved/installed
17 by the MIS department. He was polite and
18 began to repeat himself several times. It
19 was apparent Jill was not listening. He
20 informed her then an Adobe license was
21 purchased for her computer and put on our
22 inventory list by request of the MIS
23 department after her computer crashed. He
24 had to tell her several times that if they
25 did not want the software, it could be

1 returned. He eventually had to raise his
2 voice to get his point across. At no other
3 time in the six-year period have I ever
4 heard David, I have sat next to him this
5 long, raise his voice or be rude to anyone.
6 It is ludicrous to think that such a polite
7 and mild-mannered man would ever need any
8 anger management. Knowing the personality
9 or lack thereof of Ms. Skapin and how rude
10 and disrespectful she is to employees, it
11 would be easy to lose your cool. Brian
12 Nelson was also sitting next to David and
13 heard him on the phone. I heard Brian on
14 the phone with Linda Phelps and he explained
15 to her that David was not being rude, that
16 he only raised his voice at the end of the
17 conversation to get his point across. In no
18 way did I ever consider David needing any
19 anger management because of an isolated
20 incident of raising his voice. David is the
21 most polite, courteous and well-mannered man
22 I have ever had the pleasure to work with.
23 In fact, he prides himself on it. I hear
24 nothing but wonderful compliments regarding
25 his behavior from county employees and

1 vendors. David informed me that the day
2 after he filed his harassment complaint with
3 the Ohio Civil Rights Commission and the day
4 after the complaint was published in the
5 Akron Beacon Journal, that he was forced to
6 sign an Ease at Work form for anger
7 management. This incident happened several
8 weeks ago and was not mentioned to him until
9 February 22nd of 2006. It is obvious
10 retaliation for filing the complaint. This
11 harassment has caused a hostile work
12 environment. Sincerely, Shannon Lysenko.

13 Your letter is in sharp contrast to
14 Mr. Nelson's testimony where no mention was
15 made to his immediately calling the director
16 of finance and budget to say that I was not
17 rude.

18 Why do you think Mr. Nelson would not be
19 telling the full story?

20 MS. BRIGSS: Objection.

21 I don't know how she could know what
22 Brian was thinking.

23 MR. McCANN: I think it's very important
24 to the issue at hand. If someone has given
25 testimony which is certainly contrary to

1 this letter, and my question is why does she
2 think Mr. Nelson would not be telling the
3 full story?

4 MS. MILLER: You didn't ask Brian why he
5 didn't --

6 MR. McCANN: I'm asking Ms. Lysenko who
7 was a witness to all this.

8 MS. MILLER: Yes, but she can't answer
9 why Brian Nelson did something. She doesn't
10 know why he did it.

11 MR. McCANN: Speculation, is that --

12 MS. MILLER: Yes, I mean, that's all that
13 she --

14 MR. McCANN: Okay. Now, how would that
15 differ from Counselor Briggs asking every
16 witness would you participate in anger
17 management?

18 MS. MILLER: Because they're answering
19 for themselves.

20 MR. McCANN: But it's speculation how
21 they would react to that.

22 MS. MILLER: But you're asking her to
23 answer a question about how -- about why
24 someone else did something. That's
25 different on why -- if you ask me why would

1 I do something, I can speculate in my own
2 mind how I might react to a certain
3 situation, but I can't speculate how she
4 might act in a certain situation or how you
5 might act in a certain situation.

6 MR. McCANN: Counselor, I'm being very
7 polite and I have to go back to the
8 honorable counselor's questions from the
9 previous session of July 10th where she
10 asked each individual -- please, let me
11 finish, whether each individual would
12 participate in anger management.

13 That was speculation, A, and, secondly,
14 anger management is a private matter and
15 that question should not have been asked. I
16 raised my objections. They were
17 consistently overruled.

18 Now, in my asking this question right now
19 as an employee of the department of
20 purchasing, she certainly has an opinion to
21 offer and whether or not it is accepted by
22 the hearing officer is another matter
23 entirely, but we're going to the heart of
24 the matter here.

25 MS. MILLER: Right. You could certainly

1 have asked Brian Nelson why he didn't do
2 that then he could answer that, but I don't
3 know how she can testify to what Brian was
4 thinking. She's not Brian.

5 MR. McCANN: My point, again, is looking
6 at the matter of Mr. Nelson and what he said
7 in his testimony where he didn't even
8 mention calling Ms. Phelps.

9 MS. MILLER: Right, but you didn't ask
10 him.

11 MR. McCANN: That's true, because it was
12 a lie, Counselor, and I'm not going to be a
13 party to lies.

14 MS. MILLER: No, the proper inquiry would
15 have been for you to ask Brian why he didn't
16 say -- did he call Linda Phelps and why did
17 he call Linda Phelps. That would have been
18 the proper inquiry, to find out why he
19 didn't do that. It's not -- she can't
20 testify to what Brian did. She doesn't --
21 she's not Brian.

22 THE WITNESS: Can I tell you what I heard
23 happened?

24 MS. MILLER: No.

25 THE WITNESS: Okay.

1 MR. McCANN: Well, I'll tell you what
2 happened.

3 MS. MILLER: Well, you're not under oath.
4 You can't testify.

5 MR. McCANN: Well, swear me in.

6 MS. MILLER: Well, when you get ready to
7 call --

8 MR. McCANN: No, this is germane, Hearing
9 Officer, and, again, you are serving as the
10 advocate for the administration. I know
11 you're in an unclassified position, I
12 understand that, but we have got to get to
13 the heart of the matter and you took me to
14 task on Monday how are we going to deal with
15 these issues, and I am prepared in my
16 questioning to deal with these issues.

17 MS. MILLER: And you can ask Shannon
18 anything you want about what Shannon knows.

19 MR. McCANN: All right. Then I'll ask
20 the next question.

21 BY MR. McCANN:

22 Q Do you feel that Mr. Nelson was being pressured to
23 act as the cover for the director of finance and
24 budget and the director of communications?

25 MS. BRIGGS: Objection.

1 MS. MILLER: Overruled.

2 BY MR. McCANN:

3 Q I'll repeat the question.

4 A Yes, please.

5 Q Do you feel that he was being pressured to act as
6 the cover for the director of finance and budget
7 and the director of communications?

8 A Well, yeah.

9 Q And why is that?

10 A Well, Linda is very close to retiring. He's been
11 telling everyone that she's promised him her
12 position.

13 MS. MILLER: Has he told you that?

14 THE WITNESS: Yes, he has.

15 BY MR. McCANN:

16 Q My next question is this, if you had a problem
17 with information about pricing or issues regarding
18 competitive bids or requests for proposals, would
19 you go to Mr. McCann for assistance or Mr. Nelson?

20 A Mr. McCann.

21 Q And why is that?

22 A David is knowledgeable about all of the purchasing
23 procedures and he trained me in all of the
24 purchasing procedures.

25 Q You were asked by Roger Johnson to comment about

1 the alleged incident of February 8 where according
2 to the Employee Assistance Program referral I was,
3 quote, "yelling and creating a disturbance that
4 affected the entire office"; is that correct?

5 A Yes.

6 Q Was Mr. Johnson courteous to you?

7 A No.

8 Q What did Mr. Johnson ask you?

9 A He asked if I was there that day at work, where I
10 sat in the office, what door you left when you
11 left the room, what door you entered in to the
12 budget offices and whether I was afraid of you.

13 Q And how did you respond?

14 A Well, I told him where I sat. I told him which
15 door you left, and I told him at no time have I
16 ever been afraid of you and that you had just
17 raised your voice on the phone and left the
18 office.

19 Q And the interview was abruptly ended without you
20 being able to provide elaboration?

21 A Yes, that's correct. I started telling him I was
22 glad that you finally stood up for yourself and
23 that you had been provoked for so long and then he
24 cut me off.

25 MS. MILLER: And this was about the

1 incident on the phone with Jill?

2 THE WITNESS: No.

3 MS. MILLER: No.

4 THE WITNESS: This was the incident where
5 they said that he was -- got in an argument
6 with Brian Nelson and Linda Phelps and was
7 yelling.

8 MS. MILLER: So you were present at both?

9 THE WITNESS: Yes.

10 MS. MILLER: Okay. Now, help me
11 understand, where is your office?

12 THE WITNESS: Same one as David's room,
13 720. He's in an office, has a door. I'm
14 kind of out in the middle of the hallway.

15 MS. MILLER: Okay. I'm not -- when you
16 get off at the second floor, Linda Phelps'
17 office is there. Is that where you are?

18 THE WITNESS: No.

19 MS. MILLER: Okay.

20 THE WITNESS: It's kind of next to
21 council chambers, a little bit down that
22 hallway.

23 MS. MILLER: Okay.

24 THE WITNESS: In the back.

25 MS. MILLER: Okay.

1 THE WITNESS: So when he would have left
2 to go to the budget office, I wouldn't have
3 heard anything else. That's what Roger was
4 asking.

5 MS. MILLER: Okay. So let me understand,
6 your office, her office is in -- when you
7 get off the elevator, her office is to the
8 left and is that where Brian Nelson's office
9 is as well?

10 THE WITNESS: At the time now, but not at
11 that time -- yes, he was back there then,
12 yes.

13 MS. MILLER: Okay. And your office when
14 I get off the elevator I would go to the
15 right?

16 THE WITNESS: Yes.

17 MS. MILLER: Okay.

18 THE WITNESS: And theirs is to the left.

19 MS. MILLER: Okay. So when he was -- got
20 in -- had the conversation with Jill Skapin,
21 that was in his office where you are?

22 THE WITNESS: Yes.

23 MS. MILLER: Okay. And when he got in
24 this conversation with Linda Phelps with
25 Brian Nelson present, was that in his

1 office?

2 THE WITNESS: Yes.

3 MS. MILLER: That was in Dave's office?

4 THE WITNESS: He was on the phone in his
5 office and then he left the office to go
6 talk to them in person.

7 MS. MILLER: And were you present when
8 they were speaking in person?

9 THE WITNESS: No.

10 MS. MILLER: Okay.

11 MR. McCANN: May I continue my
12 questioning?

13 MS. MILLER: Yes.

14 BY MR. McCANN:

15 Q As clerk of the board of control, you process
16 quite a number of documents related to services
17 and to the best of your ability insure that
18 questionable items that are not in accordance with
19 Summit County Ordinance 177 are resolved; is that
20 correct?

21 A Yes.

22 Q If there were philosophical differences on the
23 board of control issues, do you feel you have any
24 recourse to your communicating your concern, and
25 is your opinion respected and listened to by the

1 director, Linda Sowa-Phelps?

2 MS. BRIGGS: Objection. This is totally
3 irrelevant.

4 MR. McCANN: I'm sorry, it is not
5 irrelevant and, Counselor, once again
6 understanding who you represent, it goes to
7 the heart of the matter of the whole sense
8 of an office.

9 MS. MILLER: Could you repeat the
10 question?

11 MR. McCANN: Yes, ma'am. If there were
12 philosophical differences on board of
13 control issues, do you feel you had any
14 recourse to communicating your --

15 MS. MILLER: Okay. Let's just stop with
16 that. Let's break that question down
17 because there were like three questions in
18 there.

19 MR. McCANN: All right.

20 BY MR. McCANN:

21 Q The first one would be if there were philosophical
22 differences on the board of control issues, do you
23 feel you have any recourse to communicating your
24 concern?

25 A Yes, I do.

1 Q Would you communicate that concern to director
2 Linda Sowa-Phelps?

3 A No.

4 Q To whom would you communicate your concern?

5 A If I have, say, a contract that I'm not sure was
6 bid properly or, I don't know, if they don't have
7 sufficient whatever, just not enough documentation
8 or just if we don't know if it needs board of
9 control or not, I -- before I would talk to Linda
10 and people do this all the time.

11 If, you know, they ask mom a question, she
12 says no and then they go ask dad and tell them
13 something different and then, you know, dad says
14 yes, and that's what happens so I kind of bypassed
15 her.

16 I go straight to our chair for board of
17 control and I'll ask a very vague question leaving
18 out names, departments, vendors and we get a
19 written answer about the issue and that's how we
20 handle that.

21 MS. MILLER: Who is the chair of the
22 board of control?

23 THE WITNESS: Linda Murphy most of the
24 time, yeah.

25 MS. MILLER: Okay.

1 BY MR. McCANN:

2 Q My next question is, if someone adds an item to
3 the board of control agenda, is there an adequate
4 amount of time to review the material?

5 MS. BRIGGS: Objection. I object to how
6 is this relevant to why we're here today? I
7 don't know.

8 MR. McCANN: You will see in just a
9 moment if you allow me to continue my line
10 of questioning.

11 MS. MILLER: Overruled. Go ahead.

12 THE WITNESS: What was that?

13 BY MR. McCANN:

14 Q I'll repeat the question. If someone adds an item
15 to the board of control agenda, is there an
16 adequate amount of time to review the material?

17 A No, we have a deadline of Friday at noon. The
18 meeting's Wednesday so if something's added on, we
19 haven't read all of the documentation.

20 Q So according to your minutes of August 3rd, 2005,
21 there was an add-on by insurance's Don Mittiga to
22 the agenda for professional service contract for
23 the Cleveland based center for Family and Children
24 subsidiary Ease at Work, would you have had time
25 to review the documentation?

1 A No, not if it was added on.

2 Q Finally, are you familiar with the Ohio Revised
3 Code Section 2921.03?

4 A No.

5 Q All right. I'm going to give you a copy of that
6 and I have nothing further.

7 - - -

8 CROSS-EXAMINATION

9 BY MS. BRIGGS:

10 Q You testified that you --

11 MS. MILLER: Wait, hold on a second.

12 What is 2921.03?

13 MR. McCANN: It's entitled intimidation.

14 Shall I read it?

15 MS. MILLER: No.

16 MR. McCANN: Okay.

17 BY MS. BRIGGS:

18 Q You testified that you overheard a conversation
19 with Dave and Jill regarding computer software --

20 A Yes.

21 Q -- in your office?

22 A (Witness nodding head up and down.)

23 Q In fact, you couldn't hear anything that Ms.

24 Skapin was saying during that conversation, could
25 you?

1 A No.

2 Q So you have no idea what she might have been
3 saying to Mr. McCann?

4 A No, only what we discussed.

5 Q Okay. You testified something about you felt
6 Mr. Nelson was covering up for Ms. Phelps and Ms.
7 Skapin because he's been promised Ms. Phelps' job.

8 What did you mean by that, covering up for
9 what?

10 A Well, the question, I was answering the question.
11 I don't know about any covering up but if I were
12 asked why --

13 Q That was the question and you answered yes so what
14 was he covering up?

15 A Why, why would something be covered up. That's my
16 question, why.

17 MR. McCANN: And the --

18 THE WITNESS: What was covered up?

19 MS. BRIGGS: Excuse me, you're not
20 allowed to talk to her.

21 MR. McCANN: Objection, please.

22 MS. MILLER: Overruled.

23 BY MS. BRIGGS:

24 Q You also made a statement that you didn't think
25 anybody else has been sent to EAP.

1 Are you involved with EAP program?

2 A No, I'm not.

3 Q Do you refer people to EAP?

4 A No.

5 Q So, in fact, you really have no idea who has been
6 sent to EAP or anger management under the
7 executive's office, do you?

8 A No, my statement was I have never heard of anyone.

9 Q Okay. And the disturbance that happened on
10 February 8th in the budget and management office,
11 you, in fact, were not present when Mr. McCann was
12 standing outside Ms. Yee's office raising his
13 voice?

14 MR. McCANN: Objection.

15 MS. MILLER: Overruled.

16 THE WITNESS: No, I was not --

17 BY MS. BRIGGS:

18 Q Okay.

19 A -- there.

20 Q And you just testified about the contract for Ease
21 At Work and the fact that you didn't have time to
22 review the documentation. Do you vote on the
23 board of control?

24 A No.

25 Q Do you have any say as to what contracts go

1 through or don't go through?

2 A No, I just present the documentation to the board
3 members.

4 Q Okay. On the letter that Mr. McCann wrote -- or
5 read, excuse me, that you wrote on his behalf,
6 where you say that Ms. Skapin is rude to employees
7 and her lack of personality, have you ever, in
8 fact, had a conversation with Ms. Skapin?

9 A Yes, I have.

10 Q Can you give me an example of why she's rude and
11 lack of personality?

12 A Oh, yes. Yes, I can. I've had a phone call --
13 let's see, the most recent one we had an item on
14 board of control that was listed for Bob
15 Scarlitelli that was listed wireless
16 communications as the department on the agenda.

17 I got a really rude, nasty phone call,
18 yelling and screaming and what are you doing?
19 What department is that? I've never heard of that
20 department. That department's called
21 communications, blah-blah-blah, just on and on and
22 on. I was like, so that's just -- that's par for
23 the course.

24 Q Are there many other examples? Have you had a lot
25 of communications with Ms. Skapin? Do you work

1 with her on a daily basis?

2 A No. No, I do not.

3 MS. BRIGGS: Okay. I don't have any
4 further questions.

5 MS. MILLER: Dave, do you have anymore
6 questions?

7 MR. McCANN: Nothing further.

8 MS. MILLER: Okay. Thank you.

9 - - -

10 JOYCE SLOAN

11 of lawful age, a Witness herein, having been first duly
12 sworn, as hereinafter certified, testified and said as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. McCANN:

16 Q Will you, please, state your name, spelling your
17 last name and your former position with Summit
18 County?

19 A Okay, my name is Joyce Sloan, S-l-o-a-n, and I was
20 the deputy director of purchasing.

21 Q Thank you, Joyce. Three years ago in July of
22 2003, you were director of purchasing; is that
23 correct?

24 A Correct.

25 Q And you completed my job evaluation in July of

1 2003; is that correct?

2 A Correct.

3 Q I would now like to read from that job evaluation.

4 MS. MILLER: One second. Who did you
5 work -- what appointing authority did you
6 work for?

7 THE WITNESS: I worked for the county
8 executive.

9 MS. MILLER: Okay. Your husband worked
10 for the fiscal office; is that right?

11 THE WITNESS: Yeah.

12 MS. MILLER: I was confused, sorry.

13 BY MR. McCANN:

14 Q There were five areas where the director of
15 purchasing makes comments and the first one is
16 resource management. Ms. Sloan wrote, David is
17 extremely organized. He begins contact with the
18 various offices when legislation is introduced,
19 authorizing advertisement to bid, informing them
20 of his availability and assists in the bid
21 process. He is in contact with the offices
22 immediately after passage of the legislation to
23 complete the bid documents advertised and go
24 through the bid process to completion.

25 The second section is administrative

1 professional effectiveness. David always projects
2 a professional image when he is in contact with
3 the various offices, personnel, vendors and the
4 public. He is very dependable and you can rely on
5 him to complete whatever task he is working on.

6 The third area is decision making. David
7 has the ability to identify and solve problems
8 very efficiently and effectively. He always
9 obtains every bit of information before making a
10 decision or suggestion as to the best course of
11 action to take. David is very capable of making
12 changes quickly and effectively.

13 The fourth area is communication. David is
14 always available and believes one of the main
15 functions of the purchasing department is to help
16 in whatever way possible to get to the end result
17 properly.

18 The fifth area is agency/division
19 compliance. David totally understands the
20 functioning of the purchasing department and
21 continues to reinforce the importance of the
22 department and how we should work with other
23 departments, vendors and the public. He always
24 assists in solving problems and continuously looks
25 for ways to obtain the best results.

1 If I had an anger problem in 2003, it would
2 have been noted on my job evaluation?

3 A Yes.

4 Q Did I stay late as needed to insure bids were
5 delivered or equipment was received?

6 A Yes.

7 Q At any time between July 1999 when the director of
8 budget and management began until your retirement,
9 did she ever express a contempt for any one man by
10 saying words like I am going to break him?

11 MS. BRIGGS: Objection. I don't
12 understand the question.

13 MS. MILLER: Are you asking did Linda
14 Phelps say that word?

15 MR. McCANN: Yes, or words to that effect
16 about any one man.

17 THE WITNESS: About any one man?

18 BY MR. McCANN:

19 Q Yes.

20 A Yeah, she did.

21 MR. McCANN: I have nothing further.

22 - - -

23 CROSS-EXAMINATION

24 BY MS. BRIGGS:

25 Q Joyce, how long have you been retired from your

1 job with the county?

2 A I retired in -- well, I left in January of '05 and
3 my retirement was effective May of '05.

4 Q Okay. So since May of '05, you would have no
5 knowledge of Mr. McCann's job performance or any
6 potential anger issues?

7 A No.

8 MS. BRIGGS: Okay. Nothing further.

9 MS. MILLER: Do you know who she was
10 talking about when she said that?

11 THE WITNESS: No.

12 MS. MILLER: Okay.

13 THE WITNESS: I mean, nobody in
14 particular at that particular time. That
15 might have been, you know, just in
16 conversation.

17 MS. MILLER: Okay.

18 MR. McCANN: Nothing further.

19 MS. MILLER: Thank you. Dave, are you
20 going to admit that job evaluation?

21 MR. McCANN: Yes, if you'd like, I have
22 necessary copies.

23 MS. MILLER: Dave, on your exhibits, just
24 write numbers. Kasie's letters, you're
25 numbers.

1 MR. McCANN: Okay. That's fine.

2 (Exhibit 1 was marked for
3 identification.)

4 DEBORAH HERSHFELD

5 of lawful age, a Witness herein, having been first duly
6 sworn, as hereinafter certified, testified and said as
7 follows:

8 MR. DeFEO: We did have a couple of
9 issues I wanted to address.

10 Mr. McCann had sent us a release of
11 information that he had drafted and it's
12 Ease At Work's policy to use their own form
13 of release.

14 MS. MILLER: Okay.

15 MR. DeFEO: And we have that here, and
16 we'd like to execute this as something that
17 covers the testimony for today.

18 MR. McCANN: That's fine.

19 MR. DeFEO: Please, review that.

20 MR. McCANN: Okay.

21 MR. DeFEO: I think there's something at
22 the top that needs your name also.

23 MR. McCANN: Okay.

24 MR. DeFEO: Also, Mr. McCann has made a
25 couple of requests for documents. One was

1 made under the authority of the Ohio Public
2 Records Act, and another was under the
3 administrative -- or the -- yes, the rules
4 for social workers, and we had been taking
5 that under review and a letter was sent to
6 you yesterday. You probably haven't
7 received it. Here's a copy.

8 Ease At Work reviewed our requirements,
9 our legal requirements, for giving you
10 access to those documents, and under the
11 Public Records Act, we're unable to do it.

12 Those documents are expressly excluded
13 from public records and there is a method
14 for you to get those documents, but you must
15 ask Fred Blevins to make a request in
16 writing. If you make that request through
17 Fred Blevins, then you can get the documents
18 but we are unable to give them to you at
19 this point.

20 MR. McCANN: For the record, thank you
21 for your courtesy, Counselor, and we'll
22 address some of those issues presently.

23 BY MR. McCANN:

24 Q First, would you, please, state your name and
25 spell your last name, please?

1 A Deborah Hershfield. Spell my last name?

2 Q Please.

3 A H-e-r-s-h-f-i-e-l-d.

4 Q And your position with the Cleveland-based
5 children -- or Family & Children subsidiary Ease
6 At Work?

7 A I'm the market manager for the Akron office for
8 Ease At Work.

9 Q Okay. And your professional designation?

10 A Licensed independent social worker.

11 Q And you are licensed through the State of Ohio; is
12 that correct?

13 A Yes, correct.

14 Q All right. Thank you.

15 MS. MILLER: Can I ask a question?
16 Whatever documents he requested from you
17 that you need a written request from
18 Blevins, did you bring them with you so if
19 he gives the request to Blevins he can
20 because isn't he here? Isn't Blevins here?

21 MR. DeFEO: No, we don't have those with
22 us.

23 MS. MILLER: Okay.

24 MR. McCANN: We'll be dealing with that
25 matter in just a moment, Counselor.

1 MS. MILLER: Okay.

2 BY MR. McCANN:

3 Q For the record, I would like to read your letter.

4 Dear Mr. McCann, we received your initial
5 request under Ohio Revised Code Section 149.43 and
6 149.44 sections of the Ohio Public Records Act and
7 your second request under the Ohio Administrative
8 Code Section 4757-5-01 in each case for a copy of
9 records for David McCann maintained by Ease At
10 Work and Center For Families & Children, the
11 center. Please note that the center, including
12 its division Ease At Work, is a private, nonprofit
13 organization, not a public agency. As a private
14 entity, the center is not subject to the
15 disclosure provisions of the Ohio Public Records
16 Act that you cite. Even if the center was subject
17 to these provisions, Section 149.431A1 of the act
18 expressly excludes from public records any
19 information identifying an individual receiving
20 counseling or other service. Section 149.431A1
21 states any information directly or indirectly
22 identifying a present or former individual patient
23 or client or his diagnosis, prognosis or medical
24 treatment, treatment for a mental or emotional
25 disorder, treatment for mental retardation or a

1 developmental disability, treatment for drug abuse
2 or alcoholism or counseling for personal or social
3 problems is not a public record. Ohio
4 Administrative Code Section 4757-5-01 imposes a
5 duty on counselors to release records to those who
6 receive treatment or --

7 MS. MILLER: Dave, can you slow down
8 while you're reading? It's real hard for
9 her to get that.

10 MR. McCANN: I'm sorry. I know we want
11 to move things along. I'll go back.

12 BY MR. McCANN:

13 Q Ohio Administrative Code 4757-5-01 imposes a duty
14 on counselors to release records to those who
15 receive treatment or services from the counselors
16 and in this case, Mr. Fred Blevins is your
17 counselor and your client/counselor relationship
18 is with Mr. Blevins. Mr. Blevins is not employed
19 by the center or Ease At Work. He renders
20 services as a member of the network of counselors
21 available to Ease At Work. If you desire to have
22 a copy of records you believe are in the
23 possession of Ease At Work or the center relating
24 to the counseling services you received, you must
25 request those records from Mr. Blevins because

1 your relationship as a client is with Mr. Blevins.
2 We can only release to an individual information
3 in our possession related to services provided to
4 that individual at the direction of the counselor
5 providing the services. To handle this request in
6 any different manner places the center in a
7 position of ignoring the specific relationships
8 created between counselor and clients which we are
9 not at liberty to ignore. If you write to
10 Mr. Blevins and ask him to direct the center and
11 Ease At Work to release a copy of records we have
12 in our possession pertaining to your treatment, we
13 will be able to turn a copy of any such records
14 over to you when we receive that written direction
15 from Mr. Blevins. Please understand that we must
16 strictly adhere to these rules. Please call me if
17 you have questions respecting the foregoing. Very
18 truly yours, Debbie Hershfield.

19 As my first exhibit, I cite from the Ohio
20 Administrative Code, Code Section 4757-19-02,
21 requirements for licensure as an independent
22 social worker and, again, to repeat, you are a
23 licensed independent social worker?

24 A Yes.

25 Q In relation to this section of the Ohio

1 Administrative Code, you do have a master's degree
2 in social work?

3 A Yes.

4 Q And you have had two years of supervised social
5 work experience?

6 A Yes.

7 Q All right. The next section would be Exhibit 3.

8 (Exhibit 3 was marked for
9 identification.)

10 MS. MILLER: Dave, she has stickers that
11 you can put on. You don't have to write
12 exhibit every time if you want to use them.

13 MR. McCANN: Thank you.

14 BY MR. McCANN:

15 Q This is from Ohio Administrative Code 4757-5-01,
16 Section Five, and I would like to read from
17 Section Five, counselors, social workers and
18 marriage and family therapists shall provide
19 clients with reasonable access to records
20 concerning the client.

21 I now would like to as the next exhibit
22 substitute Ohio senate bill 19, the effective date
23 January 27th, 2006 as Exhibit 4.

24 (Exhibit 4 was marked for
25 identification.)

1 BY MR. McCANN:

2 Q And the section will be 6 on page 2.

3 Section 6 of this substitute Ohio senate
4 bill 19 reads when the employee assistance
5 professional has the expressed consent of the
6 client or if the client is deceased or disabled,
7 the client's legal representative or when the
8 testimonial privilege is abrogated under law,
9 these are the exceptions in terms of what may be
10 released and that precedes on the following page.

11 MR. McCANN: The next exhibit is Exhibit
12 5.

13 (Exhibit 5 was marked for
14 identification.)

15 BY MR. McCANN:

16 Q This is from Ohio Administrative Code 4757-5-01,
17 and it is noted, a check mark there --

18 MS. MILLER: This is 4?

19 MR. McCANN: This would be No. 5.

20 BY MR. McCANN:

21 Q Under this section, discrimination, counselor,
22 social workers and marriage and family therapists
23 shall not practice, condone, facilitate or
24 collaborate in any form of discrimination on the
25 basis of race, ethnicity, national origin, color,

1 sex, sexual orientation, age, marital status,
2 political belief, veteran status or mental or
3 physical challenge.

4 My next exhibit is the Ease referral form
5 for managers and supervisors and that would be
6 Exhibit 6.

7 (Exhibit 6 was marked for
8 identification.)

9 BY MR. McCANN:

10 Q Ms. Hershfield, have you ever seen this document
11 before?

12 A Yes.

13 Q Did you also note my signature and the notation I
14 made in the lower right-hand corner?

15 A Yes.

16 Q Was that of any concern to you?

17 A No.

18 MR. McCANN: I'd like now to as the next
19 exhibit, Exhibit 7.

20 (Exhibit 7 was marked for
21 identification.)

22 BY MR. McCANN.

23 Q This is from Ohio Administrative Code 4757-21-03,
24 scope of practice for an independent social
25 worker. This would be 7, and I'd like to read

1 this for the record, please.

2 MR. DeFEO: I would just like to
3 interject that Ms. Hershfield's not being
4 charged with anything in this hearing and
5 this isn't about whether she is practicing
6 within the scope of her profession. It's
7 not what my understanding and the nature of
8 the hearing is today.

9 MR. McCANN: Counselor, and I appreciate
10 the question, Counselor. The whole notion
11 of what I am leading up to is a situation
12 where I was ultimately terminated from
13 employment for alleged insubordination for
14 my failure to see a medical doctor whose
15 specialty is psychiatry, and towards that
16 goal if you will bear with me, please, there
17 are questions that I am leading to.

18 MS. MILLER: Overruled.

19 BY MR. McCANN:

20 Q Scope of practice for an independent social
21 worker. Using the definition of social workers
22 defined in division C of Section 4757.1 of the
23 revised code, the board adopts the following scope
24 of practice for an independent social worker.

25 An independent social worker may perform for

1 a fee, salary or other consideration, counseling,
2 psychosocial interventions and social psycho
3 therapy without supervision in an agency setting
4 as a private practitioner or as an independent
5 contractor.

6 Section B, the scope of practice for an
7 independent social worker may include those duties
8 as described in table B of this rule. Table B,
9 scope of practice, range of duties, psycho social
10 assessment, intervention planning, psycho social
11 intervention and social psychotherapy which
12 includes the diagnosis and treatment of mental and
13 emotional disorders in counseling. Program
14 assessment, planning and development, program
15 implementation and evaluation, organizational
16 assessment, planning and development,
17 intervention, accountability and supervision,
18 specialized problem, oriented assessment,
19 specialized project or case oriented planning,
20 specialized intervention, evaluation of
21 consultation activities, provide training,
22 supervision for social workers seeking licensure
23 as independent social workers.

24 Did you review any of Mr. Blevins'
25 recommendations?

1 A Yes, I did.

2 Q On the last page of his fax to you, follow-up
3 recommendations, Mr. Blevins says continue EAP
4 assessment, counseling to determine nature and
5 extent of any possible anger management issues.

6 Have you seen that document?

7 A Yes, I have.

8 Q All right. So we --

9 MS. BRIGGS: Excuse me one second. May I
10 get a copy of that? I have never seen this
11 document before.

12 MR. McCANN: I believe I have it if
13 you'll bear with me just a moment, please.

14 MS. BRIGGS: Thank you.

15 MS. MILLER: Is this 8 then?

16 MR. McCANN: Yes.

17 (Exhibit 8 was marked for
18 identification.)

19 BY MR. McCANN:

20 Q So would it be your opinion --

21 MS. MILLER: Can I stop you for a second?

22 MR. McCANN: Yes.

23 MS. MILLER: What's page 1 and 2? This
24 is only page 3.

25 MR. McCANN: No, I understand. Those

1 were the faxed materials forwarded to Ms.
2 Hershfield.

3 MS. MILLER: Is there a page 1 and 2?

4 MR. McCANN: Well, I'm sure there were 22
5 pages to the whole document that went to Ms.
6 Hershfield.

7 MS. MILLER: Okay. Is someone going to
8 admit the whole 22? I don't know what that
9 is. I don't have -- I've never seen that.

10 MR. McCANN: Okay. Well, I'm admitting
11 the document and the witness has said she
12 has seen this before.

13 MS. MILLER: Right. But it's kind of
14 hard for me to know what the whole -- what
15 the context of any of this -- I don't even
16 know what this form begins with, do you know
17 what I'm saying? I don't know what form
18 this is.

19 MR. McCANN: Yeah, I understand. This is
20 the fax material that Mr. Blevins forwarded
21 to the Ease At Work representative.

22 MS. MILLER: Is this the request you were
23 looking for? Is this the whole document?

24 MR. McCANN: I have the documentation
25 that I need from Mr. Blevins.

1 MS. MILLER: So you have the whole
2 document?

3 MR. McCANN: No, I do not.

4 MR. DeFEO: I will object to this line of
5 questioning if we don't have an entire
6 document to look at.

7 MR. McCANN: All right. Then I will move
8 to my next exhibit. I'll accept. You may
9 sustain his --

10 MS. MILLER: Okay. Well, just wait,
11 Dave. I think this is easy to fix.

12 If you have the whole document, we'll
13 just copy the whole document and we'll have
14 the whole thing if you have it.

15 MS. BRIGGS: Do you want to take a short
16 recess?

17 MS. MILLER: Sure. We'll just take a
18 five-minute break and Dave will get the
19 whole document.

20 (Recess taken.)

21 - - -

22 MS. MILLER: Let's go back on the record
23 for a second.

24 Do you have the document then? You said
25 it was 22 pages.

1 MR. McCANN: What Mr. Blevins provided me
2 were applicable to my request but they
3 were -- 22 pages were not issued to me.

4 MS. MILLER: So 22 pages is the whole
5 document?

6 MR. McCANN: That was faxed to the Ease
7 At Work.

8 MS. MILLER: And you've received some of
9 them?

10 MR. McCANN: That's correct.

11 MS. MILLER: Okay. How many pages did
12 you receive?

13 MR. McCANN: I have seven pages.

14 MS. MILLER: Okay. How about if we have
15 Janis copy those seven that you have and
16 then -- because I see your problem. You
17 can't give me all 22 because you don't have
18 it; is that right?

19 MR. McCANN: That's correct.

20 MS. MILLER: And you can't have it until
21 you get the written request from Blevins to
22 Hershfield?

23 MR. McCANN: I can't answer that question
24 because there are nuances that are involved
25 here that I'm sure counsel is aware of that

1 I would rather not go in to at this time.

2 MS. MILLER: Okay. Then let's get at
3 least those seven pages.

4 MR. McCANN: That's fine.

5 MS. MILLER: He just stated that there
6 are 22 pages to the entire document, but he
7 has never received all 22. Those are part
8 of the documents that he's trying to get.

9 MS. BRIGGS: Okay.

10 MS. MILLER: So there are seven pages and
11 he's going to -- Janis is going to copy the
12 seven pages that he has and we're still on
13 break.

14 MS. BRIGGS: Okay.

15 (Recess taken.)

16 - - -

17 MS. MILLER: We're back.

18 MR. McCANN: Okay.

19 MS. MILLER: So we're going to mark that
20 as Exhibit 8, the whole thing because that
21 includes what you -- the one page you had
22 previously marked as 8; is that correct?

23 MR. McCANN: Yes.

24 MS. MILLER: Okay.

25 (Exhibit 8 was remarked for

1 identification.)

2 BY MR. McCANN:

3 Q I'd like to if I may begin, looking at the first
4 document that my referral to Ease At Work was for
5 anger management; is that correct?

6 MS. MILLER: You're looking at a page
7 of -- that's got three fax covers on it?

8 MR. McCANN: Yes.

9 MS. MILLER: All right.

10 THE WITNESS: This page?

11 BY MR. McCANN:

12 Q Yes. My referral was for anger management; is
13 that correct?

14 MS. MILLER: Dave, I'm sorry, are you
15 looking at this page?

16 MR. McCANN: I'm looking at this page.

17 BY MR. McCANN:

18 Q You'll see in the upper left-hand corner the date
19 of the assessment was February 24th, 2006, and
20 administrative referral for anger management is
21 there, an acknowledgement. That was my referral;
22 is that correct?

23 A This is Fred Blevins' assessment.

24 Q Right.

25 A This is your referral.

1 Q Right.

2 A Can you ask the question again?

3 Q Sure, by all means. Is there an acknowledgement
4 that my referral to Ease At Work was for anger
5 management?

6 A Your --

7 MS. MILLER: I think the problem is that
8 she's calling this the referral.

9 BY MR. McCANN:

10 Q All right. Well, maybe this will help. This is
11 page 20 of 22 that was forwarded to you.

12 A Well, I have that here.

13 Q Okay. You should have that and then here it says
14 I just need an acknowledgement that was an
15 administrative referral for anger management.

16 MR. DeFEO: Are you saying
17 acknowledgement by Mr. Blevins, by yourself?

18 BY MR. McCANN:

19 Q By Ease At Work that my referral was for anger
20 management as you saw it?

21 MS. MILLER: Okay. Stop for one second.
22 You're looking at page 1 of your new Exhibit
23 8 but let me ask you, when he keeps saying a
24 referral form, you look to Exhibit 6 as a
25 referral form?

1 THE WITNESS: Correct.

2 MS. MILLER: Okay. What -- how does this
3 page 1 of Exhibit 8, how does this become
4 created? Who creates this?

5 THE WITNESS: Fred Blevins creates this.
6 Standard practice anytime a management
7 referral is sent in to a counselor, the
8 counselor does this assessment summary.

9 MS. MILLER: Okay. Just so I understand,
10 Fred Blevins would get Exhibit 6?

11 THE WITNESS: Correct.

12 MS. MILLER: Okay. And in response to
13 receipt of Exhibit 6, he would generate page
14 1 of Exhibit 8?

15 THE WITNESS: Page 1, 2 and 3.

16 MS. MILLER: Okay.

17 THE WITNESS: It's a three-page document.

18 MS. MILLER: Okay. Thank you. Go ahead,
19 Dave. I'm sorry, just trying to understand.

20 MR. McCANN: No, that's fine.

21 BY MR. McCANN:

22 Q The question again, with the fax material, is
23 there an acknowledgement that my referral to
24 Mr. Blevins was for anger management?

25 A Is that a yes-or-no answer?

1 Q Yes.

2 A I would say it was -- it's difficult for me to
3 answer that yes or no. The referral -- my
4 acknowledgement of your referral was based on the
5 information that came in on this form. What Fred
6 Blevins wrote here is his assessments. This is
7 his assessments.

8 Q I understand.

9 A My acknowledgment of the reason that you were sent
10 in was based on this form and what it says in this
11 form.

12 Q Okay.

13 A Okay.

14 Q I understand that but, again, you received the
15 22-page fax from Mr. Blevins so to confirm the
16 reasoning for my going to Ease At Work according
17 to Mr. Blevins' administrative referral for anger
18 management?

19 A I'm not familiar with the 22-page fax that -- I'm
20 not clear all of what's contained in that.

21 Q Yes, and neither am I, unfortunately, because
22 right here this is page 20 of 22 and it says
23 administrative referral for anger management.

24 MS. MILLER: That is at the top of
25 Exhibit 8, page 1?

1 MR. McCANN: Yes.

2 MS. MILLER: Okay. That didn't come out
3 on the copy.

4 MR. DeFEO: May I see that?

5 MR. McCANN: Yes, by all means.

6 MS. MILLER: Dave, can I -- can you
7 repeat your question because I think there's
8 -- we're having a communication problem?

9 MR. McCANN: All I need is an
10 acknowledgment from Ms. Hershfield that, in
11 fact, my referral was for anger management.

12 MS. MILLER: Okay. And she looks at
13 Exhibit 6 as the referral.

14 THE WITNESS: You're asking me to
15 interpret the reason that Summit County sent
16 you in and I do that based on this.

17 BY MR. McCANN:

18 Q I understand.

19 A This is Mr. Blevins, his assessments.

20 Q And this is what he's being paid to do so if I
21 rephrase the question to say would Mr. Blevins be
22 paid for his services to provide anger management
23 for me?

24 A Yes, if that were required, appropriate and
25 necessary, yes.

1 Q That's fine. Okay. So with his assessment, then
2 it is agreed upon that initially my reason for
3 seeing Mr. Blevins was for anger management?

4 A My understanding was your reason for seeing
5 Mr. Blevins was because of the stated issues on
6 this management referral form.

7 Q Okay. Which according to Mr. Blevins are anger
8 management?

9 A You'd have to ask Mr. Blevins about his
10 interpretation.

11 Q Okay. That's fine. I'll accept that.

12 A Okay.

13 Q Now, this is where I have problems, and you'll see
14 the three-part series here.

15 MS. MILLER: This would be page 4 of
16 Exhibit 8, correct?

17 MR. McCANN: Yes.

18 BY MR. McCANN:

19 Q My initial referral according to Mr. Blevins was
20 for anger management and if you look to the right
21 and to the bottom, it should be noted with an ink
22 mark I believe. If not, I'll be happy to note it
23 and this was forwarded from Mr. Blevins to Ms.
24 Hershfield.

25 MR. DeFEO: I don't see an ink mark.

1 MR. McCANN: Oh, I beg your pardon. I'll
2 be happy to --

3 MS. MILLER: I think he underlined the
4 words anger management.

5 MR. McCANN: Right here. I'll do it
6 again, that's not a problem.

7 BY MR. McCANN:

8 Q So Mr. McCann has according to Mr. Blevins been
9 referred for anger management, and then in his
10 follow-up of March 2nd according to Mr. Blevins,
11 client does not believe that he has job
12 performance issues, and then you'll see that
13 first, and then at the bottom what Ms. Hershfield
14 forwarded to Michelle Smith of the department of
15 insurance, and I'll read this, this will include
16 continuing to see the EAP counselor individually
17 to assist in improving work performance issues, so
18 we have moved from one singular issue of anger
19 management suddenly to work performance issues and
20 I will just ask the question.

21 MR. DeFEO: Could I?

22 MR. McCANN: Yes, by all means.

23 MR. DeFEO: Do we have the entire page
24 for it because I believe this is an
25 incomplete portion? I'm just trying to see

1 so we can see this in context.

2 MR. McCANN: All right. Even if it was
3 in context, Counselor, we are moving from a
4 referral to anger management, and I can
5 certainly spend the time to find it to the
6 notion and even if we ignore that, we still
7 have the bottom portion which is in its
8 entirety and we can focus exclusively on
9 that if you'd like, that's not a problem
10 with me, that Ms. Hershfield acknowledged to
11 Michelle Smith that the counselor will
12 continue to see to assist me in improving
13 work performance issues, so we have moved
14 from a singular issue of anger management to
15 work performance issues.

16 BY MR. McCANN:

17 Q My question is, had there been any communication
18 between you and Mr. Blevins regarding my referral?

19 A Yes.

20 Q Telephone?

21 A (Witness nodding head up and down.)

22 Q And was there any discussion regarding changing
23 the reason for my referral?

24 MS. BRIGGS: Objection. I don't think
25 the referral was changed. Ms. Hershfield

1 has testified that she relied on the
2 referral form which does specifically talk
3 about performance issues.

4 MR. McCANN: And I appreciate that
5 Counselor, however, as a licensed
6 independent social worker, if we are moving
7 and went to the heart of what the
8 responsibility is for a licensed independent
9 social worker, if we are moving from one
10 avenue of counseling for me to another
11 matter entirely, then there should have been
12 an evaluation.

13 MS. MILLER: Could you repeat the
14 question for her?

15 MR. McCANN: Yes, by all means.

16 BY MR. McCANN:

17 Q I had made a question as to whether you had been
18 in communication with Mr. Blevins regarding this
19 matter and had you discussed any change to the
20 reason for my having counseling?

21 A No, we didn't.

22 Q You didn't. All right. Were you pressured by
23 anyone to change the reason for my counseling?

24 A No, I wasn't.

25 Q Would you be familiar at all with what the job

1 performance issues were?

2 A What was listed on this management referral form.

3 Q Okay.

4 MR. McCANN: I have nothing further.

5 MS. BRIGGS: I don't have any questions.

6 MS. MILLER: Okay. That's it. Thank
7 you.

8 THE WITNESS: Okay. Thank you very much.

9 MS. MILLER: Is Fred Blevins here?

10 DENNIS GUTOWSKI

11 of lawful age, a Witness herein, having been first duly
12 sworn, as hereinafter certified, testified and said as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. McCANN:

16 Q Dennis, will you, please, state your name,
17 spelling your last name and your last position
18 with Summit County?

19 A My name's Dennis Gutowski, spelled
20 G-u-t-o-w-s-k-i. Until January 16th of 2006, I
21 was the executive director of the Veterans Service
22 Commission for nine and a half years.

23 MS. MILLER: And you're retired?

24 THE WITNESS: No, I took a position with
25 another organization, however, I still am a

1 consultant with the Veterans Service
2 Commission and I work eight hours per pay
3 period.

4 MS. MILLER: Thank you.

5 BY MR. McCANN:

6 Q My first question is, you are appointed by the
7 Common Pleas Court in your position? You are
8 appointed by the Common Pleas Court judges?

9 A No, I was hired by the commissioners who are
10 appointed by the Common Pleas judges.

11 Q All right. Thank you. Very quickly, and I
12 appreciate you coming in today, our cooperative
13 work began in July 1999 when you needed a new
14 computer system.

15 From that point forward, did I insure that
16 you received timely, accurate and services
17 provided according to law for flag bids,
18 newsletters, computer-like services?

19 A Yes.

20 MR. McCANN: I have nothing further.

21 MS. BRIGGS: I just want to note for the
22 record my continuing objection of the
23 relevance and the cumulativeness of the
24 witnesses.

25 CROSS-EXAMINATION

1 BY MS. BRIGGS:

2 Q I just have one question for you. Would you have
3 any personal knowledge of Mr. -- any incidents
4 that happened between Mr. McCann and his
5 supervisors earlier this year?

6 A I was not present at any circumstances as you've
7 addressed.

8 MS. BRIGGS: Okay. Thank you.

9 MS. MILLER: That's it. Thank you.

10 MARYANNE SWEENEY

11 of lawful age, a Witness herein, having been first duly
12 sworn, as hereinafter certified, testified and said as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. McCANN:

16 Q Maryanne, will you, please, state your name,
17 spelling your last name and telling us your
18 current position?

19 A Maryanne Sweeney, S-w-e-e-n-e-y, support services
20 administrator for the Summit County Sheriff's
21 Office is my current position.

22 Q Thank you very much. Very quickly here, did I
23 courteously provide you with information and
24 prepare bid specifications as it's related to the
25 medical services required for the jail?

1 A Yes.

2 Q Was it completed in a timely fashion?

3 A Yes.

4 Q And did I follow all lawful procedures that are
5 prescribed by Summit County?

6 A I don't know. I think so. I mean --

7 MS. MILLER: If you don't know --

8 THE WITNESS: I don't know.

9 MS. MILLER: Okay.

10 MR. McCANN: That's fine. That's all I
11 have.

12 THE WITNESS: Okay.

13 CROSS-EXAMINATION

14 BY MS. BRIGGS:

15 Q One question, would you have any personal
16 knowledge related to any incidents that occurred
17 between Mr. McCann and his supervisors earlier
18 this year?

19 A No, ma'am.

20 MS. BRIGGS: Okay. Thank you.

21 RUSSELL B. GELTZ

22 of lawful age, a Witness herein, having been first duly
23 sworn, as hereinafter certified, testified and said as
24 follows:

25 DIRECT EXAMINATION

1 BY MR. McCANN:

2 Q Deputy Geltz, will you, please, state your full
3 name, spelling your last name and your position
4 with the Summit County Sheriff's Office?

5 A Russell B. Geltz, last name is G-e-l-t-z. I'm the
6 property evidence specialist for Summit County
7 Sheriff's Office.

8 Q Thank you. As the deputy sheriff in charge of
9 unclaimed personal items for the jail, did I work
10 with you to insure their proper disposal whether
11 donation or destroyed?

12 A Yes.

13 Q With the jewelry items, did I individually
14 separate literally hundreds of pieces of jewelry
15 to be weighed by an expert jewelry appraiser who
16 was paid by the sheriff?

17 A Yes.

18 MR. McCANN: Nothing further.

19 CROSS-EXAMINATION

20 BY MS. BRIGGS:

21 Q Sir, would you have any personal knowledge of
22 incidents that occurred between Mr. McCann and his
23 supervisors earlier this year?

24 A No.

25 MS. BRIGGS: I have nothing further.

1 MS. MILLER: That's it. Thank you.

2 THE WITNESS: Okay.

3 ROBERT GALLIK

4 of lawful age, a Witness herein, having been first duly
5 sworn, as hereinafter certified, testified and said as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. McCANN:

9 Q Deputy, good morning. Will you, please, state
10 your name, spelling your last name and your
11 position with the sheriff's office?

12 A Robert Gallik, G-a-l-l-i-k, deputy, Summit County
13 Sheriff's Office Training Bureau.

14 Q Thank you, Deputy. I'd like to show you two
15 pictures, please.

16 This was -- the pictures that the deputy has
17 deals with spent brass shell casings and my
18 question is, did I courteously work with you and
19 insure the timely and accurate weighing of over
20 two tons of spent brass shell casings?

21 A Absolutely.

22 MR. McCANN: I have nothing further.

23 CROSS-EXAMINATION

24 BY MS. BRIGGS:

25 Q Sir, do you have any personal knowledge of

1 incidents that occurred between Mr. McCann and his
2 supervisors earlier this year?

3 A Only what I've read in the paper.

4 MS. BRIGSS: Okay. Thank you.

5 JAMES A. FROST, JR.

6 of lawful age, a Witness herein, having been first duly
7 sworn, as hereinafter certified, testified and said as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. McCANN:

11 Q Jim, would you, please, state your name, spelling
12 your last name and telling us your position with
13 the fiscal office?

14 A James A. Frost, Jr., F-r-o-s-t, supervisor or
15 assistant director of administration.

16 Q And that would be for what department?

17 A Services.

18 Q Services. Thank you. I'm going to show you two
19 pictures.

20 Did you work with Mr. McCann to insure the
21 accurate weight of spent brass shell casings?

22 A Yes.

23 Q Did he courteously communicate admission and
24 physically help you throughout the process?

25 A Yes.

1 MR. McCANN: I have nothing further.

2 CROSS-EXAMINATION

3 BY MS. BRIGGS:

4 Q Sir, do you have any personal knowledge of
5 incidents that occurred between Mr. McCann and his
6 supervisors earlier this year?

7 A No.

8 MS. BRIGGS: Okay. I have nothing
9 further.

10 MS. MILLER: Thank you.

11 DALE SOLTIS

12 of lawful age, a Witness herein, having been first duly
13 sworn, as hereinafter certified, testified and said as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. McCANN:

17 Q Deputy Barrick, would you --

18 A I'm Soltis.

19 Q Soltis, I'm sorry.

20 A We work together.

21 Q All right. Deputy Soltis, would you kindly state
22 your name?

23 A Dale Soltis.

24 Q And spell your last name.

25 A S as in Sam, o-l-t-i-s as in Sam.

1 Q Thank you. Your position with the Summit County
2 Sheriff?

3 A Currently I'm a shift commander on afternoons. I
4 got promoted since we talked last but that's what
5 I do.

6 Q Thank you, and I'm sorry. There are a plethora of
7 names.

8 A That's all right.

9 Q One of the things that we worked closely with was
10 the disposal of inventory from the Ohio Building.

11 Did I work courteously and in a timely
12 fashion to explain to you the requirements for
13 moving large quantities of equipment and when
14 equipment became available for transfer, did
15 you -- did your trustees personally pick it up?

16 A Yes, they did.

17 Q Were there ever any problems in communicating with
18 me?

19 A No, not at all.

20 MR. McCANN: I have nothing further.

21 CROSS-EXAMINATION

22 BY MS. BRIGGS:

23 Q Sir, do you have any personal knowledge of
24 incidents that occurred between Mr. McCann and his
25 supervisors earlier this year?

1 A Only what I've read in the newspaper.

2 MS. BRIGGS: Okay. Thank you.

3 THE WITNESS: Is this something I can get
4 somebody to sign?

5 GAIL WARLEY

6 of lawful age, a Witness herein, having been first duly
7 sworn, as hereinafter certified, testified and said as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. McCANN:

11 Q Good morning, Gail.

12 A Good morning.

13 Q Would you, please, state your name, spell your
14 last name and your position with the Veterans
15 Services Commission?

16 A My name is Gail Warley, and that's W-a-r-l-e-y. I
17 work for the Summit County Veterans Service
18 Commission and my position is administrative
19 supervisor.

20 Q Thank you. One very quick question, please.

21 A Yes.

22 Q Did I courteously communicate with you on all
23 purchasing procedures and insure the timely
24 completion of projects such as the newsletter and
25 the purchasing of Memorial Day flags?

1 A Oh, always, yes.

2 MR. McCANN: Nothing further.

3 CROSS-EXAMINATION

4 BY MS. BRIGGS:

5 Q Ma'am, do you have any personal knowledge of
6 incidents that occurred between Mr. McCann and his
7 supervisors earlier this year?

8 A No, other than what was published in the Akron
9 Beacon Journal, no.

10 MS. BRIGGS: Okay. Thank you.

11 GEORGE M. BAKER

12 of lawful age, a Witness herein, having been first duly
13 sworn, as hereinafter certified, testified and said as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. McCANN:

17 Q Good morning, George.

18 A Good morning, David.

19 Q Would you, please, state your name, spelling your
20 last name and your position with the Veterans
21 Services Commission?

22 A George M. Baker, B-a-k-e-r, and I'm the executive
23 director of the Summit County Veterans Service
24 Commission.

25 Q Thank you. Very quickly, did I courteously

1 communicate with you and provide for the timely
2 completion of all projects to include the purchase
3 of Memorial Day flags, to include the veteran
4 services newsletters and service contracts for
5 your computers?

6 A Yes.

7 MR. McCANN: Nothing further.

8 CROSS-EXAMINATION

9 BY MS. BRIGGS:

10 Q Sir, do you have any personal knowledge of any
11 incidents that occurred between Mr. McCann and his
12 supervisor earlier this year?

13 A No.

14 MS. BRIGGS: Okay. Thank you.

15 MARY LOU DAUGHERTY

16 of lawful age, a Witness herein, having been first duly
17 sworn, as hereinafter certified, testified and said as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. McCANN:

21 Q Mary Lou, would you, please, state your name,
22 spelling your last name and tell us your position
23 with the clerk of courts?

24 A Okay, Mary Lou Daugherty, D-a-u-g-h-e-r-t-y, and
25 I'm chief deputy with the Summit County Clerk of

1 Courts.

2 Q And any and all communications with the purchasing
3 office, and I'll focus specifically earlier this
4 year on the inventory disposal from the second
5 floor of the Safety Building, did I work with you
6 to take care of the voluminous quantities of
7 material in the former clerk of courts site?

8 A Yes, you did.

9 MR. McCANN: I have nothing further.

10 CROSS-EXAMINATION

11 BY MS. BRIGGS:

12 Q Mary Lou, do you have any personal knowledge of
13 incidents that occurred between Mr. McCann and his
14 supervisors earlier this year?

15 A No, not personal knowledge, no, just the newspaper
16 article.

17 MS. BRIGGS: Okay. Thank you. That's
18 it.

19 STEVE FINICAL

20 of lawful age, a Witness herein, having been first duly
21 sworn, as hereinafter certified, testified and said as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. McCANN:

25 Q Chief, would you, please, state your name?

1 A Sure.

2 Q Spell your last name and your position with the
3 Summit County Sheriff's.

4 A Sure, Steve Finical, last name is F-i-n-i-c-a-l,
5 and I'm assistant sheriff with the Summit County
6 Sheriff's Office.

7 Q Thank you, Chief.

8 Beginning in 2001, we began working on a
9 number of projects to include the acquisition of
10 mattresses, food services, medical services, bunk
11 beds, software for both the civil and jail
12 divisions, Ameritech pay phones at the jails and,
13 of course, the religious concerns that went with
14 that about the cost.

15 Did I courteously communicate all aspects of
16 the projects to you to include creation of bid
17 specifications, necessary revisions insuring
18 project completion?

19 A Yes, you did.

20 MS. MILLER: Did you say religious?

21 MR. McCANN: Yes, there was a concern
22 among members of the religious community as
23 to the cost that inmates would have that
24 their -- the people they were calling would
25 have to pay.

1 MS. MILLER: Oh, the pay phone?

2 MR. McCANN: Yes.

3 MS. MILLER: Okay, I'm sorry. You said
4 mattresses and religious like in the same
5 sentence and I couldn't figure that out,
6 sorry.

7 MR. McCANN: I have nothing further.
8 Thank you.

9 CROSS-EXAMINATION

10 BY MS. BRIGGS:

11 Q Real quickly, do you have any personal knowledge
12 of incidents that occurred between Mr. McCann and
13 his supervisors earlier this year?

14 A No, I don't.

15 MS. BRIGGS: Okay. Thank you.

16 ROBERT DAVIS

17 of lawful age, a Witness herein, having been first duly
18 sworn, as hereinafter certified, testified and said as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. McCANN:

22 Q Lieutenant Davis, if you would, kindly state your
23 full name and your position with the Summit County
24 Sheriff, please.

25 A My name is Robert Davis. I am the administrative

1 lieutenant of corrections.

2 Q Thank you. My first question is this, did I
3 courteously work with you and your staff to insure
4 a quick turnaround on the issuance of bid
5 specifications, sharing the bidder's meeting,
6 going through each of the pages individually with
7 all of the assembled vendors, did I insure all
8 addendums were sent out in a timely fashion, and
9 did I courteously communicate with you regarding
10 the progress of the jail software program?

11 A Yes.

12 Q Were you aware of any controversy surrounding the
13 jail software program being a competitive bid as
14 opposed to being a request for proposals?

15 MS. BRIGGS: Objection. Irrelevant.

16 MS. MILLER: Overruled. Go ahead.

17 THE WITNESS: Yes, I was aware there was
18 a question.

19 MR. McCANN: No further questions.

20 CROSS-EXAMINATION

21 BY MS. BRIGGS:

22 Q Real quickly, do you have any personal knowledge
23 of incidents that occurred between Mr. McCann and
24 his supervisors earlier this year?

25 A No, I do not.

1 MS. BRIGGS: Okay. Thank you.

2 PAMELA J. MURRAY

3 of lawful age, a Witness herein, having been first duly
4 sworn, as hereinafter certified, testified and said as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. McCANN:

8 Q Pamela, would you kindly state your name, spelling
9 your last name and telling us your position with
10 the sheriff's office?

11 A Pamela J. Murray, M-u-r-r-a-y, and I'm the budget
12 management director at the Summit County Sheriff's
13 Office.

14 Q On a personal note, I hope your veteran -- your
15 United States Army son is doing okay.

16 A Thank you.

17 Q Good. I worked with you on a number of projects
18 to include the medical services, food services,
19 disposal of equipment such as radio and disposal
20 of spent brass shell casings.

21 Did I courteously communicate with you
22 regarding all of these projects and insure their
23 timely completion?

24 A Absolutely.

25 MR. McCANN: Nothing further.

1 CROSS-EXAMINATION

2 BY MS. BRIGGS:

3 Q Pam, do you have any personal knowledge of
4 incidents that occurred between Mr. McCann and his
5 supervisors earlier this year?

6 A No.

7 MS. BRIGGS: Okay. Thank you.

8 TERRI K. COOLEY

9 of lawful age, a Witness herein, having been first duly
10 sworn, as hereinafter certified, testified and said as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. McCANN:

14 Q Terri, would you, please, state your full name,
15 spelling your last name and your position with the
16 Summit County Sheriff?

17 A Terri K. Cooley, C-o-o-l-e-y, director of
18 administration finance.

19 Q Thank you, Terri. One very quick question for
20 you.

21 Did I courteously communicate and follow up
22 on all aspects of competitive bidding processes
23 such as medical services, food services, bunk beds
24 and spent shell casings?

25 A Yes.

1 Q Did I work with you and insure the accurate
2 weighing of jewelry that was part of the jail
3 inmate property?

4 A Yes.

5 MR. McCANN: I have nothing further.

6 CROSS-EXAMINATION

7 BY MS. BRIGGS:

8 Q Just a quick one.

9 A Yeah.

10 Q Do you have any personal knowledge of incidents
11 that occurred between Mr. McCann and his
12 supervisors earlier this year?

13 A You mean witnessing?

14 Q Right.

15 A Just -- I don't even know how to put this. I
16 guess through the grapevine.

17 Q Okay. So you weren't present, you don't have any
18 knowledge of what goes on on a day-to-day basis
19 with Mr. McCann and his supervisors?

20 A No.

21 MS. BRIGGS: Okay. Thank you.

22 CHARLES SWEENEY

23 of lawful age, a Witness herein, having been first duly
24 sworn, as hereinafter certified, testified and said as
25 follows:

DIRECT EXAMINATION

1

2 BY MR. McCANN:

3 Q Would you, please, state your name, spelling your
4 last name and your position with the sheriff's
5 office?

6 A Charles Sweeney, S-w-e-e-n-e-y, and I'm sports
7 services administrator.

8 Q Chuck, one very quick question. Bear with me just
9 a moment here, please.

10 Did I courteously communicate and follow up
11 with all issues regarding the purchasing and the
12 transfer of surplus computer items to your office?

13 A You did.

14 Q Did I courteously keep you informed on the
15 progress of the jail's software bid?

16 A You did.

17 Q Did I complete the jail software bid in a timely
18 fashion?

19 A You did.

20 MR. McCANN: Nothing further.

21 CROSS-EXAMINATION

22 BY MS. BRIGGS:

23 Q Do you have any personal knowledge of incidents
24 that occurred between Mr. McCann and his
25 supervisors earlier this year?

1 A No.

2 MS. BRIGGS: Okay. Thank you.

3 JOHN BARRICKMAN

4 of lawful age, a Witness herein, having been first duly
5 sworn, as hereinafter certified, testified and said as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. McCANN:

9 Q Would you, please, state your name, Deputy,
10 spelling your last name and your position with the
11 sheriff's office?

12 A John Barrickman, B-a-r-r-i-c-k-m-a-n, and my title
13 is operational development.

14 Q Thank you, Deputy.

15 Did I work with you on the steel beds
16 program for the jail?

17 A Yes.

18 Q Did I courteously communicate all aspects of that
19 project to you?

20 A Yes.

21 Q Did I find a location and time and stamping in New
22 Bremen, Ohio and suggest through the competitive
23 bidding pricing mechanism that they be recommended
24 and did you and Tom Hathaway visit the prototype
25 at this location in Southern Ohio?

1 A Yes.

2 Q Did I assist you in the storage facility bid
3 specification preparation?

4 A Yes.

5 Q Did I follow up on all of these programs in a
6 timely fashion?

7 A Yes.

8 MR. McCANN: Nothing further.

9 CROSS-EXAMINATION

10 BY MS. BRIGGS:

11 Q Do you have any personal knowledge related to
12 incidents between Mr. McCann and his supervisors
13 that occurred this year?

14 A Personal knowledge, just what's in the paper.

15 MS. BRIGGS: Okay. Thank you.

16 THE WITNESS: Thank you.

17 ROBERT BICKETT

18 of lawful age, a Witness herein, having been first duly
19 sworn, as hereinafter certified, testified and said as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. McCANN:

23 Q Bob, would you, please, state your full name,
24 spelling your last name and your position with the
25 juvenile court?

1 A Robert Bickett, B-i-c-k-e-t-t, court
2 administrator.

3 Q Bob, both in your capacity when you were working
4 with the sheriff's office and now in your capacity
5 at juvenile court, did I courteously communicate
6 and follow up on all aspects of projects whether
7 food services, medical services, drug testing,
8 disposal of equipment, software licensing, radar
9 trailers for the sheriff's office?

10 A Yes.

11 Q If you ever had a question as you did for the cost
12 of living allowance for the food contract, did you
13 call me regarding my getting those from the
14 Department of Labor Statistics?

15 A Yes.

16 Q Was that done in a timely fashion?

17 A Yes.

18 MR. McCANN: Nothing further.

19 CROSS-EXAMINATION

20 BY MS. BRIGGS:

21 Q Bob, do you have any personal knowledge of
22 incidents that occurred between Mr. McCann and his
23 supervisors earlier this year?

24 A No.

25 MS. BRIGGS: Okay. Thank you.

CHRISTINE GARDNER-MARSHALL

of lawful age, a Witness herein, having been first duly sworn, as hereinafter certified, testified and said as follows:

DIRECT EXAMINATION

BY MR. McCANN:

Q Christine, would you, please, state your full name, spelling your last name and your position, please?

A Okay, my full name is Christine Gardner-Marshall. Last name is spelled M-a-r-s-h-a-l-l. My title is deputy director for contract administration at the Department of Job & Family Services.

Q Thank you. Did you count on me to get the access card system off dead center and get it moving?

A Off dead center, I don't know what that term means.

Q In other words, there was nothing going on with the project until you called me and then the project got underway?

A I don't know about nothing going on with the project. I came in to it, I'm trying to remember the time of that.

We had started the bid packet ourselves, and then the decision was made when the county was

1 also bidding for the fiscal office area that we
2 would do a combo bid and then that's when we
3 called upon purchasing to help us with the bid
4 packet.

5 Q Okay. So I was ultimately responsible for putting
6 the --

7 A Ultimately, yes, excuse me.

8 Q That's fine.

9 A Ultimately, you ended up putting out the bid
10 packet but we did start something first, yes.

11 Q Did I courteously communicate all aspects of the
12 bid project to you?

13 A Yes.

14 MR. McCANN: I have nothing further.

15 CROSS-EXAMINATION

16 BY MS. BRIGSS:

17 Q Do you have any personal knowledge of incidents
18 that occurred between Mr. McCann and his
19 supervisors earlier this year?

20 A Absolutely nothing.

21 Q Okay. Have you ever been referred to anger
22 management related to your employment?

23 A No.

24 Q If you were so referred, would you feel it
25 important to follow up with recommendations that

1 were made for you?

2 MR. McCANN: Objection.

3 MS. MILLER: Overruled, and I'll note
4 your objection if she asks the question
5 again.

6 THE WITNESS: Certainly.

7 MS. BRIGSS: Thank you. Nothing further.

8 REDIRECT EXAMINATION

9 BY MR. McCANN:

10 Q I have one final question, please.

11 Are you a classified or unclassified
12 employee?

13 A I am classified.

14 Q And appointed by?

15 A I'm not appointed. Hired is classified.

16 Q Okay. Who hired you?

17 A Job and Family Services.

18 Q And the individual who ultimately made that
19 decision?

20 A Dr. Daisy Alfred Smith.

21 MR. McCANN: Thank you.

22 RICHARD CINCURAK

23 of lawful age, a Witness herein, having been first duly
24 sworn, as hereinafter certified, testified and said as
25 follows:

DIRECT EXAMINATION

1

2 BY MR. McCANN:

3 Q Rick, would you, please, state your full name,
4 spelling your last name and your position with
5 MRDD?

6 A Richard Cincurak, C-i-n-c-u-r-a-k. I'm
7 coordinator of purchasing with Summit County Board
8 of MRDD.

9 Q Rick, did I courteously answer your questions
10 regarding matters of inventory disposal of surplus
11 and purchases?

12 A Yes, you did.

13 Q You saw the inventory system that I developed.
14 Did I effectively describe to you how the system
15 would be beneficial to MRDD?

16 A Yes.

17 Q Did I courteously answer your questions and follow
18 up in a timely fashion regarding the waste
19 management bid specifications that went out
20 earlier this year and how MRDD might piggyback on
21 to those?

22 A Yes, you did.

23 MR. McCANN: Nothing further.

24 CROSS-EXAMINATION

25 BY MS. BRIGGS:

1 Q Sir, do you have any personal knowledge of
2 incidents that occurred between Mr. McCann and his
3 supervisors earlier this year?

4 A No.

5 MS. BRIGGS: Okay. Thank you.

6 ED HARSHBARGER

7 of lawful age, a Witness herein, having been first duly
8 sworn, as hereinafter certified, testified and said as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. McCANN:

12 Q Ed, would you, please, state your name, spelling
13 your last name and your position with the
14 prosecutor's office?

15 A Yes, Ed Harshbarger, H-a-r-s-h-b-a-r-g-e-r, and
16 I'm the director of the prosecutor's child support
17 enforcement agency.

18 Q Thank you, Ed. Earlier this year I had received
19 notification about the coordination of computers
20 to nonprofit organizations and previously there
21 had been no problem but suddenly there were
22 questions. Did that seem peculiar to you?

23 A Peculiar, perhaps.

24 Q Okay. Did I courteously work with you to resolve
25 those issues, to get those computers to the

1 nonprofits that the prosecutor had designated?

2 A Yes.

3 MR. McCANN: I have nothing further.

4 CROSS-EXAMINATION

5 BY MS. BRIGGS:

6 Q Do you have any personal knowledge of incidents
7 that occurred between Mr. McCann and his
8 supervisors earlier this year?

9 A I do not.

10 MS. BRIGGS: Okay. Thank you.

11 SHIRLEY WASHINGTON

12 of lawful age, a Witness herein, having been first duly
13 sworn, as hereinafter certified, testified and said as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. McCANN:

17 Q Shirley, would you kindly state your name,
18 spelling your last name and your current position
19 with the fiscal office?

20 A My name is Shirley Washington spelled
21 W-a-s-h-i-n-g-t-o-n, and I am currently the
22 community relations director -- support service
23 administrator with the fiscal office.

24 Q And prior to that position, what position did you
25 hold with the fiscal office?

1 A Prior to that, I held the position of purchasing
2 agent with the fiscal office and before the
3 merger, I was also purchasing agent with the
4 Summit County Auditor's Office.

5 Q Thank you. Just one very quick question, during
6 the time that you were with the fiscal office, did
7 I courteously communicate and work with you on all
8 projects related to purchasing?

9 A Yes, you did.

10 MR. McCANN: Nothing further.

11 CROSS-EXAMINATION

12 BY MS. BRIGGS:

13 Q Shirley, do you have any personal knowledge of
14 incidents that occurred between Mr. McCann and his
15 supervisors earlier this year?

16 A No, I have no personal knowledge.

17 MS. BRIGGS: Okay. Thank you.

18 MARY JEAN DONOFRIO

19 of lawful age, a Witness herein, having been first duly
20 sworn, as hereinafter certified, testified and said as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. McCANN:

24 Q Mary Jean, would you kindly state your name,
25 spelling your last name and telling us your

1 position, please?

2 A Mary Jean Donofrio, D-o-n-o-f-r-i-o, deputy
3 director board of elections.

4 Q Thank you. Earlier this year was crunch time to
5 find a location for your new election machines; is
6 that correct?

7 A Correct.

8 Q Did I effectively communicate with you and follow
9 up in a timely fashion on all aspects of the
10 project to include a portal-to-portal schedule of
11 sites to be visited and provided a variety of
12 locations to be visited?

13 A That's correct.

14 Q One of the things that a classified employee like
15 myself has to deal with are the politics that are
16 legitimately a part of the county.

17 Would you say that I handled those very
18 effectively with this project?

19 A I would.

20 MR. McCANN: Nothing further.

21 CROSS-EXAMINATION

22 BY MS. BRIGGS:

23 Q Do you have any personal knowledge of incidents
24 that occurred between Mr. McCann and his
25 supervisors earlier this year?

1 A Just from the papers.

2 MS. BRIGGS: Okay. Thank you.

3 BRIAN WILLIAMS

4 of lawful age, a Witness herein, having been first duly
5 sworn, as hereinafter certified, testified and said as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. McCANN:

9 Q Brian, will you, please, state your full name,
10 spelling your last name and your position with the
11 Summit County Board of Elections?

12 A Brian Williams, W-i-l-l-i-a-m-s, and I'm the
13 director of the Summit County Board of Elections.

14 Q Thank you. At the beginning of this year was
15 crunch time to find a location for your new
16 election machines; is that correct?

17 A Yes, correct.

18 Q Did I effectively communicate and follow up on all
19 aspects of the project to include a
20 portal-to-portal schedule of sites to be visited
21 and provided you with a variety of locations to be
22 visited?

23 A Yes.

24 Q One of the things that a classified employee like
25 myself faces are the politics which are

1 legitimately a part of the government.

2 Would you say I handled all of the aspects
3 of the project regardless of the political
4 politics of it?

5 A Yes.

6 MR. McCANN: Nothing further.

7 CROSS-EXAMINATION

8 BY MS. BRIGGS:

9 Q Do you have any personal knowledge of incidents
10 that occurred between Mr. McCann and his
11 supervisors earlier this year?

12 A Only what I read in the newspaper. Nothing beyond
13 what was reported.

14 MS. BRIGGS: Okay. Thank you.

15 MICHAEL CURRY

16 of lawful age, a Witness herein, having been first duly
17 sworn, as hereinafter certified, testified and said as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. McCANN:

21 Q Would you, please, state your name, spelling your
22 last name and your position with the Summit County
23 Board of Elections?

24 A Michael Curry, C-u-r-r-y, I'm the assistant deputy
25 director.

1 Q Thank you, Michael. Earlier this year the Summit
2 County Board of Elections had to find a site for
3 their new election machines.

4 Would you say that I effectively
5 communicated with you regarding the project,
6 progress of the project, insuring a timely
7 portal-to-portal review of the facts and insured
8 its timely completion?

9 A Yes.

10 MR. McCANN: I have nothing further.

11 CROSS-EXAMINATION

12 BY MS. BRIGGS:

13 Q Sir, do you have any personal knowledge of
14 incidents that occurred between Mr. McCann and his
15 supervisors earlier this year?

16 A No.

17 MS. BRIGGS: Okay. Thank you.

18 JOHN MORGAN

19 of lawful age, a Witness herein, having been first duly
20 sworn, as hereinafter certified, testified and said as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. McCANN:

24 Q John, would you kindly state your name, spelling
25 your last name and your position with the fiscal

1 office?

2 A John Morgan, M-o-r-g-a-n. I'm the chief deputy
3 fiscal officer.

4 Q Thank you. I have but one question, did I
5 courteously work with you and insure proper
6 follow-up on all matters related to inventory?

7 A Yes.

8 MR. McCANN: Nothing further.

9 CROSS-EXAMINATION

10 BY MS. BRIGGS:

11 Q Do you have any personal knowledge of incidents
12 that occurred between Mr. McCann and his
13 supervisors earlier this year?

14 A No.

15 MS. BRIGGS: Okay. Thank you.

16 SUSAN ROSZKOWSKI

17 of lawful age, a Witness herein, having been first duly
18 sworn, as hereinafter certified, testified and said as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. McCANN:

22 Q Would you kindly state your name, spelling your
23 last name and your position?

24 A Susan Roszkowski, R-o-s-z-k-o-w-s-k-i, human
25 resource specialist.

1 Q Thank you very much, Sue. In the purchasing
2 office, we had had communications regarding
3 automobiles.

4 Did you -- would you say that I effectively
5 and courteously communicated and followed up on
6 the project as it related to declaring those
7 vehicles as surplus and insuring executive orders
8 were prepared?

9 A Yes.

10 MR. McCANN: Nothing further.

11 CROSS-EXAMINATION

12 BY MS. BRIGGS:

13 Q Do you have any personal knowledge of incidents
14 that occurred between Mr. McCann and his
15 supervisors earlier this year?

16 A No, I have none at all.

17 MS. BRIGGS: Thanks.

18 JAY CHAPMAN

19 of lawful age, a Witness herein, having been first duly
20 sworn, as hereinafter certified, testified and said as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. McCANN:

24 Q Jay, if you would kindly state your name, spelling
25 your last name and your position with the common

1 pleas court?

2 A Okay, it's Jay Chapman. The last name is
3 C-h-a-p-m-a-n, and my position is network manager
4 at the court.

5 Q Jay, as manager, you deal a lot with data
6 processing items; is that correct?

7 A Correct.

8 Q Whenever you had questions regarding purchases,
9 could you count on me to get back to you in a
10 timely fashion and provide you with a courteous
11 response?

12 A Yes, sir.

13 MR. McCANN: I have nothing further.

14 CROSS-EXAMINATION

15 BY MS. BRIGGS:

16 Q Do you have any personal knowledge of incidents
17 that occurred between Mr. McCann and his
18 supervisors earlier this year?

19 A No.

20 MS. BRIGGS: Okay. Thank you.

21 VICTORIA REEDY

22 of lawful age, a Witness herein, having been first duly
23 sworn, as hereinafter certified, testified and said as
24 follows:

25 DIRECT EXAMINATION

1 BY MR. McCANN:

2 Q Vicki, would you kindly tell us your name and
3 spell your last name and your position with the
4 executive's office?

5 A Okay, it's Victoria Reedy, R-e-e-d-y, and I'm
6 executive assistant in the law department.

7 Q A very quick question for you, Vicki. Was I
8 always courteous in my communication with you and
9 timely in following up with the requirements of
10 bids specifications for legislation to be
11 submitted to council, following up on contracts
12 for vendors, disposal of inventory?

13 A Always.

14 MR. McCANN: No further questions.

15 CROSS-EXAMINATION

16 BY MS. BRIGGS:

17 Q Vicki, do you have any personal knowledge of
18 incidents that occurred between Mr. McCann and his
19 supervisors earlier this year?

20 A No, just hearsay.

21 Q Okay. Have you ever been referred to anger
22 management related to your employment?

23 A No, I haven't.

24 Q If you were referred, would you feel it important
25 to follow up with recommendations that were made

1 for you?

2 A I don't know.

3 MS. BRIGGS: Okay. Thank you.

4 ANN SHUMAN

5 of lawful age, a Witness herein, having been first duly
6 sworn, as hereinafter certified, testified and said as
7 follows:

8 DIRECT EXAMINATION

9 BY MR. McCANN:

10 Q Good morning, Ann.

11 A Good morning.

12 Q Will you, please, state your name, spelling your
13 last name and your position with the office of
14 finance and budget?

15 A My name is Ann Shuman, A-n-n, S-h-u-m-a-n. I'm a
16 fiscal officer two.

17 Q And just one very brief question, did I
18 courteously communicate and also follow up in a
19 timely fashion with questions regarding
20 electricity and natural gas?

21 A Yes.

22 MR. McCANN: Nothing further.

23 CROSS-EXAMINATION

24 BY MS. BRIGGS:

25 Q Ann, I just have a couple of questions for you.

1 Where's your office located?

2 A In the finance and budget department on the
3 seventh floor.

4 Q Okay. Would you be close then with Kathy Yee's
5 office and Brian Nelson's office?

6 A I'm two doors down from theirs.

7 Q Okay. Were you present on February 8th of this
8 year when there was an incident that occurred
9 outside of Ms. Yee's office between Mr. McCann and
10 his supervisors?

11 A I was down in the development department until
12 after 4 o'clock and when I came upstairs, I did
13 hear some loud voices from that direction.

14 MS. BRIGGS: Okay. Thank you.

15 MS. MILLER: Let's take Rene. I'll allow
16 her to be recalled.

17 MR. McCANN: Thank you.

18 RENE DORNACK

19 of lawful age, a Witness herein, having been first duly
20 sworn, as hereinafter certified, testified and said as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. McCANN:

24 Q Would you, please, state your name, spelling your
25 last name, please?

1 A Dornack, D-o-r-n-a-c-k, Rene, R-e-n-e.

2 Q And your current position, please?

3 A Administrative secretary.

4 Q One of the issues that I personally have been
5 dealing with is the issue of my being referred to
6 anger management and my response to individuals.

7 You had a similar situation in early 2005
8 when there was a question of your continued
9 employment with office services.

10 Were you summoned to Ms. Sowa-Phelps'
11 office?

12 A Yes, I was.

13 Q How were you treated in that meeting?

14 A I was brow beaten.

15 Q Was Brian Nelson in the room with you?

16 A Yes, he was.

17 Q And what did Mr. Nelson say to you after the
18 meeting?

19 MS. BRIGGS: I'm going to object to the
20 relevance of this testimony.

21 MS. MILLER: Overruled.

22 THE WITNESS: Well, I think it's very
23 relevant.

24 MS. BRIGGS: Well, it's not for you to
25 decide. It's for the hearing officer to

1 decide.

2 THE WITNESS: I think it's relevant
3 because --

4 MS. MILLER: Overruled. Go ahead.

5 THE WITNESS: Brian after the meeting
6 told me to hold my chin up because Linda's
7 not going to be around the whole time.

8 He sat there spineless through the whole
9 meeting while she sat there and brow beat me
10 and he had his head down. He couldn't even
11 look at me and after in a closed-door
12 meeting, he came up to me and he said, "Keep
13 your chin up. She's not going to be here
14 all the time. You know, she's going to be
15 retiring soon."

16 MS. MILLER: In a closed-door meeting
17 with you?

18 THE WITNESS: With just me --

19 MS. MILLER: Okay.

20 THE WITNESS: -- afterwards so I think
21 it's relevant because --

22 MS. MILLER: Ms. --

23 THE WITNESS: I know. I know, I'm sorry.

24 MS. MILLER: You're doing a good job.
25 Just answer the questions. You're doing

1 fine.

2 THE WITNESS: I just know that when I
3 heard that what happened to David, I was
4 like you go guy because I sat there and
5 cried through my meeting with her and I
6 would have liked to have raised my voice. I
7 didn't have that opportunity because I was
8 just a big baby like now.

9 MS. MILLER: It's okay. You're fine.

10 THE WITNESS: I wish I could have raised
11 my voice because he doesn't need anger
12 management.

13 I worked with him for three and a half
14 years and I never -- he's never been angry.
15 He doesn't need anger management, he never
16 did. He's not the person who needs anger
17 management and everybody is so spineless on
18 that floor to stand up for him.

19 MR. McCANN: I have nothing further.

20 MS. BRIGGS: I don't have any questions.

21 MS. MILLER: Okay. Thank you.

22 KEITH CLARK

23 of lawful age, a Witness herein, having been first duly
24 sworn, as hereinafter certified, testified and said as
25 follows:

DIRECT EXAMINATION

1

2 BY MR. McCANN:

3 Q Keith, would you, please, state your name,
4 spelling your last name and your position with the
5 insurance department?

6 A Keith, last name Clark, C-l-a-r-k, and I do the
7 accounting for the insurance department.

8 Q Keith, very simply, did I courteously work with
9 you and follow up on all aspects of purchasing
10 requirements for insurance to include the purchase
11 of software and computer equipment?

12 A Yes.

13 Q Were you involved at all with the Ease At Work
14 contract?

15 A Other than the payment of the bills, no.

16 MR. McCANN: Nothing further.

CROSS-EXAMINATION

17

18 BY MS. BRIGGS:

19 Q Keith, do you have any personal knowledge of
20 incidents that occurred between Mr. McCann and his
21 supervisors earlier this year?

22 A No.

23 MS. BRIGGS: Okay. Thank you.

24 FRED BLEVINS

25 of lawful age, a Witness herein, having been first duly

1 sworn, as hereinafter certified, testified and said as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. McCANN:

5 Q Fred, if you would kindly state your name,
6 spelling your last name and your position, please?

7 A Sure, my name is Fred Blevins, B-l-e-v-i-n-s, and
8 I'm a licensed professional clinical counselor in
9 private practice.

10 Q And just to insure that you did receive the
11 authorization to disclose health information?

12 A Yes, I did.

13 Q Okay. Thank you. I just have a few issues to
14 deal with here, and maybe you can elaborate fully.

15 A Okay.

16 Q And I believe all of you have the exhibit that
17 relates to his fax material to Ease At Work. I'll
18 refer to the last page and Mr. Blevins' follow-up
19 recommendation.

20 A Uh-huh.

21 Q Which refers to my coming for counseling for
22 alleged anger management and it is so written
23 there; is that correct?

24 A Okay.

25 Q Just an acknowledgement, yes, the referral was for

1 anger management?

2 A The EAP referral?

3 Q Yes.

4 A It was for anger management assessment as I
5 understood it, yes.

6 Q All right. That's fine. The next document which
7 has been handed out to the chair of this and
8 opposing counsel and I'll give you a copy of this
9 as well, I have highlighted with my ink marks what
10 I am a little confused about.

11 I was initially referred for the singular
12 issue of anger management?

13 A Uh-huh.

14 Q On the two Ease At Work report forms, it has
15 suddenly evolved to job performance issues.

16 Were you, and my question is, were you
17 contacted to change the reason for my referral?

18 A Those are essentially the same issues basically.

19 A job performance issue concerns such things as
20 attendance, conflict with other workers,
21 completion of job tasks, those kind of things but
22 job performance encompasses the area of conflict.

23 Q So why have we gone singular from anger management
24 to job performance plural issues?

25 A Okay, please, point that out.

1 Q Sure, yes. As you'll see, they are noted by the
2 black marking.

3 A Okay.

4 Q By the black marks there.

5 A Okay, let me read that. Okay, and what is your
6 question?

7 Q The question is, why have we evolved from the
8 singular issue of my referral for anger management
9 now to issues related, issues plural, related to
10 my job performance?

11 A Okay, I don't see that as happening. I mean, I
12 don't understand how you're arriving at that
13 conclusion.

14 Q It's in the document here. We're
15 initially dealing -- either it was a job
16 performance issue, singular or issues plural, and
17 I would like -- I'm just curious why is there the
18 change to my initial referral which was a singular
19 anger management to the point to being job
20 performance issues plural?

21 MS. BRIGGS: I'm going to object at this
22 point. The question's been asked and
23 answered.

24 MS. MILLER: Mr. Blevins, let me just try
25 and ask it.

1 THE WITNESS: Okay.

2 MS. MILLER: When you read -- well, when
3 you met with him, with Dave --

4 THE WITNESS: Yes.

5 MS. MILLER: -- the issue you were
6 dealing with was the anger management
7 referral?

8 THE WITNESS: I attempted to complete an
9 anger management assessment which was never
10 done.

11 MS. MILLER: Okay. And when you in your
12 job you think that anger management or if
13 Dave had a conflict with his supervisor,
14 that would be a job performance issue?

15 THE WITNESS: That's correct.

16 MS. MILLER: Okay. Go ahead, Dave, you
17 can keep going.

18 MR. McCANN: And I will note the chair
19 saying a job performance issue, and it's
20 noted in both bits of information there were
21 issues and we're --

22 MS. MILLER: Can I try something else,
23 David? I think this might -- did at any
24 time anyone from the county contact you and
25 say there was anything other -- going on

1 with Dave other than what was in this
2 initial referral?

3 THE WITNESS: Anyone from Summit County,
4 the employer?

5 MS. MILLER: The employer, Ease At Work,
6 did anyone else say there was any other
7 problem with Dave's work performance other
8 than what was contained in Exhibit 6, the
9 Ease referral form?

10 THE WITNESS: You mean anything other
11 than the anger management?

12 MS. MILLER: Right.

13 THE WITNESS: Such as attendance or
14 something else?

15 MS. MILLER: That he wasn't competent,
16 that he wasn't doing his job properly.

17 THE WITNESS: No, I don't recall any
18 other, yeah.

19 MS. MILLER: Okay.

20 MR. McCANN: I have nothing further.

21 MS. BRIGGS: I have no questions.

22 MS. MILLER: Okay. Wait, let's stop for
23 one second though.

24 Dave, did you want to take care of this
25 issue about not getting your fax?

1 MR. McCANN: No.

2 MS. MILLER: Okay.

3 THE WITNESS: Okay. Is it appropriate
4 for me to ask Mr. McCann a question?

5 MS. MILLER: Sure.

6 THE WITNESS: Okay. I was wondering in
7 all this why you never asked a particular
8 question and the question was, why was I
9 referred for an anger management assessment,
10 you know, the assessment itself? I was
11 never asked that, why I made that referral
12 and I'm just curious because that's
13 certainly something that could be answered
14 but that's up to you?

15 MR. McCANN: And I've chosen not to.

16 THE WITNESS: Okay. All right.

17 MS. MILLER: Thank you. Who have we
18 missed? Let's go off.

19 (Discussion had off record.)

20 MS. MILLER: I was just asking there were
21 several people who could not or would not be
22 available this week because they had --
23 it's, obviously, summer and they had
24 vacations so Janis is going to say who those
25 people are.

1 MR. McCANN: Before you do that --

2 MS. MILLER: Okay.

3 MR. McCANN: -- I would entertain closing
4 statements.

5 MS. MILLER: Well, we're not -- I'm not
6 done. I'm --

7 MR. McCANN: I'm just saying -- I'm
8 asking.

9 MS. MILLER: We're not to that point yet.

10 MR. McCANN: Okay.

11 MS. CORBIN: Rosie Butler, B-u-t-l-e-r,
12 Ray Valle, V-a-l-l-e, David Hannan,
13 H-a-n-n-a-n, Nick Kostandaras,
14 K-o-s-t-a-n-d-a-r-a-s, David Kish, K-i-s-h,
15 Sharlee Greer, G-r-e-e-r, Ken Teleis,
16 T-e-l-e-i-s, Diane Wheatley,
17 W-h-e-a-t-l-e-y, Connie Vargo, V-a-r-g-o,
18 Brian Lowe, L-o-w-e, Bob Gainer,
19 G-a-i-n-e-r, and Sarah Leedham,
20 L-e-e-d-h-a-m, and if I may make note, I may
21 have missed sending her a subpoena because I
22 have not heard from her and so I'm going to
23 give -- call her.

24 MS. MILLER: Okay. Dave are you waiving
25 those witnesses?

1 MR. McCANN: Yes, I am.

2 MS. MILLER: Okay. Then, Janis, if you
3 would just communicate with those people and
4 maybe not Sarah since you're not sure if we
5 communicated with her initially that they
6 are no longer under subpoena for this
7 hearing.

8 MS. CORBIN: Okay.

9 MS. MILLER: Earlier today, Dave, there
10 was a discussion with your witness, Shannon
11 Lysenko, about a question for Brian Nelson,
12 the issue about speaking or calling someone
13 while you spoke with Jill. I don't remember
14 exactly what happened.

15 Did you want to recall Brian to ask him
16 that question?

17 MR. McCANN: No.

18 MS. MILLER: Okay. Is anyone going to
19 call Linda Phelps who was present during
20 this incident that occurred?

21 MS. BRIGGS: No.

22 MR. McCANN: No.

23 MS. MILLER: Okay. Kasie, do you have
24 any other witnesses to call?

25 MS. BRIGGS: Yes, I have Leonard Foster.

1 MS. MILLER: Okay. And, Dave, do you
2 have any other witnesses to call?

3 MR. McCANN: No further.

4 MS. MILLER: Okay. Is Leonard here
5 today?

6 MS. BRIGGS: Yes.

7 MS. CORBIN: He was waiting for me to
8 call.

9 MS. MILLER: Okay. Then we'll call him.

10 (Recess taken.)

11 - -

12 LEONARD FOSTER

13 of lawful age, a Witness herein, having been first duly
14 sworn, as hereinafter certified, testified and said as
15 follows:

16 DIRECT EXAMINATION

17 BY MS. BRIGGS:

18 Q Leonard, I just have a couple of questions for you
19 and three exhibits that I want to go over quickly.

20 I don't know if you know, the hearing
21 officer has consolidated our previous hearing on
22 the suspension with this termination hearing, so
23 this is all one hearing now so I just want to go
24 over quickly what led up to the termination.

25 You know, we've been through everything that

1 led up to the 30-day suspension and after that.
2 I'd just like you to take a look at this document
3 and tell me if you recognize that and what it is
4 and I believe that would be K, Exhibit K.

5 MS. MILLER: Yes.

6 MS. BRIGGS: I think that's where we left
7 off.

8 (Exhibit K was marked for
9 identification.)

10 BY MS. BRIGGS:

11 Q I'm sorry, go ahead.

12 A Yes, I'm familiar.

13 Q Okay. And what is that document?

14 A It's a notice of intent to discipline regarding
15 the termination as it states on the -- March 17th
16 we had a recommendation that David be suspended.
17 Well, it was looking at a suspension. The report
18 came back from the hearing officer. At this point
19 in time the -- we had given him I think it was
20 like 30 days or thereabouts in order to appear
21 before the psychiatrist.

22 He did not do that so on the 31st of May, we
23 sent this letter -- or I sent this letter to him
24 informing him we were holding another pre D to
25 determine whether or not he had appeared because

1 we had not had any communication with him prior to
2 that time, to give him an opportunity to have --
3 to state whether he did or did not go. If he had
4 not attended, we were going to then terminate him
5 which ultimately we did.

6 Q Okay. There was a predisciplinary hearing held
7 and that was in front of whom?

8 A Allison Leonard.

9 (Exhibit L was marked for
10 identification.)

11 BY MS. BRIGGS:

12 Q Okay. And could you take a look at this document
13 which would be Exhibit L and tell me if you
14 recognize that and what it is?

15 A This is the -- yes, I do recognize it. This is
16 the report from Allison Leonard, the hearing
17 officer, giving me her findings as to the
18 predisciplinary meeting, her determination as to
19 whether she felt there was just cause for
20 discipline or not.

21 Q Okay. And what was her determination?

22 A Her determination was that there was, in fact,
23 just cause for discipline and at that point in
24 time since there was, in fact, just cause for
25 discipline, David was terminated.

1 (Exhibit M was marked for
2 identification.)

3 BY MS. BRIGGS:

4 Q Okay. And if you could take a look at this
5 exhibit, it would be M, tell me if you recognize
6 that document and what that is, please.

7 A This is, in fact, the notice of termination having
8 found that there was just cause, there was the
9 letter going to Mr. McCann indicating or notifying
10 him that his services with the county would no
11 longer be warranted.

12 MS. BRIGGS: Okay. I have nothing
13 further.

14 MR. McCANN: Just one question, please.

15 MS. MILLER: Okay.

16 CROSS-EXAMINATION

17 BY MR. McCANN:

18 Q Are you a classified or unclassified employee?

19 A I'm an unclassified employee.

20 Q And you work at the pleasure of the county
21 executive?

22 A I work at the pleasure of the county executive.

23 MR. McCANN: Nothing further.

24 MS. MILLER: Thank you.

25 MS. BRIGGS: Thank you.

1 MS. MILLER: Okay. If I understand
2 correctly then, you've rested? You have
3 nothing else you want to submit?

4 MS. BRIGGS: Correct.

5 MS. MILLER: Now, Dave, I have two
6 questions for you.

7 Are you going to admit your performance
8 appraisals other than the one that you
9 admitted?

10 MR. McCANN: The one from 2003 is the one
11 that I am admitting.

12 MS. MILLER: You're not going to offer
13 any of the other ones?

14 MR. McCANN: No.

15 MS. MILLER: Are you going to testify?

16 MR. McCANN: No. I do have a closing
17 statement though if that can be entered.

18 MS. MILLER: Well, you know --

19 MR. McCANN: Or do we not have closing
20 statements? You'll have to tell me what
21 procedure is.

22 MS. MILLER: Well, the closing -- I can
23 certainly allow you to have a closing
24 statement then Attorney Briggs will have a
25 closing statement as well, but the problem

1 is that nothing you say in that statement is
2 evidence. What that closing statement would
3 be would be reviewing the evidence that has
4 been submitted.

5 MR. McCANN: And that would be on the
6 record?

7 MS. MILLER: Sure. Now, I'm trying to
8 say this the way that I -- if there are
9 things that did not come out in testimony,
10 if there is other evidence that you feel
11 needs to be brought forth and it wasn't, you
12 can't refer to that in the closing
13 statement.

14 MR. McCANN: I understand.

15 MS. MILLER: Okay.

16 MR. McCANN: And everything in the
17 closing statement has been presented and is
18 a part of the evidence that I presented to
19 you.

20 MS. MILLER: Okay. Your closing
21 statement can't contain your statements
22 because --

23 MR. McCANN: You're putting a lot of
24 footnotes on this, Counselor.

25 MS. MILLER: No, I'm actually trying to

1 be helpful, Dave.

2 MR. McCANN: All right.

3 MS. MILLER: You didn't testify so I
4 don't have any sworn testimony, any sworn
5 evidence from you. I don't have your
6 version of what occurred either on the phone
7 with Ms. Skapin because Shannon's testimony
8 is only your end of the conversation.

9 I don't have your version of what
10 occurred between or didn't occur between
11 you, Ms. Phelps and Brian Nelson.

12 All I'm saying to you is that your
13 closing statement -- for example, your
14 closing statement with Brian Nelson, if you
15 commented on the incident that occurred
16 between you and Ms. Phelps, the only
17 evidence I have about what happened is
18 Mr. Nelson's testimony.

19 MR. McCANN: So all of the information
20 that has been given to you as a part of my
21 request for this hearing is not evidence?

22 MS. MILLER: No, because if you want --
23 for example, I'm just going to give an
24 absurd example, if you wrote in here that
25 you took the elevator to the 8th floor,

1 Kasie is allowed to question how you took
2 the elevator, what button did you push, she
3 thought she could have a witness that saw
4 you take the stairs. I just don't -- she
5 has the opportunity to cross-examine you.

6 MR. McCANN: I'm not denying that.

7 MS. MILLER: Right. I'm just trying to
8 say that I don't -- the evidence if I can
9 just summarize what I've heard is that
10 you've presented a lot of testimony about
11 your work performance from many appointing
12 authorities and many departments, and I've
13 heard all of that and I have heard testimony
14 from Ms. Hershfield and Mr. Blevins about
15 what occurred after this incident occurred,
16 but the only evidence I have regarding the
17 incident with Ms. Skapin and the incident
18 with Phelps and Nelson is Nelson's testimony
19 and Shannon's testimony as to your side of
20 that conversation. Now --

21 MR. McCANN: So the brief that I prepared
22 for you that refers to the master servant, I
23 mean, that's not --

24 MS. MILLER: It's not evidence. It's --

25 MR. McCANN: It's statement of law

1 though, my interpretation of the law which
2 you as a hearing officer I would hope would
3 consider as you go through this process.

4 MS. MILLER: I absolutely consider the
5 law.

6 MR. McCANN: Okay, that's fine. That's
7 all I can ask.

8 MS. MILLER: However, I can only consider
9 evidence that's been presented here.

10 MR. McCANN: I understand.

11 MS. MILLER: And I'm just telling you
12 what my recollection of the only evidence
13 that's been presented.

14 MR. McCANN: In my brief to you, I do
15 cite the law and I will trust that in your
16 wisdom you will review that then I have
17 nothing further and my case is closed.

18 MS. MILLER: Okay. What I would prefer
19 rather than closing statements, Dave, is a
20 brief from each side.

21 MR. McCANN: In terms of a typed brief?

22 MS. MILLER: Yes. It seems like you
23 already have your statement typed?

24 MR. McCANN: Yes, I do.

25 MS. MILLER: So you could submit that.

1 MR. McCANN: That will be fine. I'll do
2 that by e-mail. Is there a time frame that
3 you want that?

4 MS. MILLER: Well, I'll give 30 days
5 because Kasie didn't know that I was going
6 to ask for that, but I just wanted to
7 reiterate to you, Dave, that the information
8 in your closing statement is not evidence.

9 MR. McCANN: I understand.

10 MS. MILLER: Okay.

11 MR. McCANN: And that you will duly
12 consider all facets that deal with law?

13 MS. MILLER: I certainly will follow law,
14 but I can only consider evidence that's been
15 presented.

16 MR. McCANN: I understand.

17 MS. MILLER: Okay. If there's nothing
18 further, then we're adjourned.

19 - - -

20 (Proceedings adjourned at 11:28 o'clock, a.m.)

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1 C E R T I F I C A T E

2 STATE OF OHIO,)
)SS:
3 SUMMIT COUNTY.)

4 I, Leanne Garro, a Notary Public within and for the
5 State of Ohio, duly commissioned and qualified, do
6 hereby certify that I attended the foregoing Proceedings
7 in its entirety, and that I wrote the same in stenotype,
8 to the best of my ability, and that this is a true and
9 correct transcript of my Stenotype notes.

10

11 IN WITNESS WHEREOF, I have hereunto set my hand and
12 affixed my seal of office at Akron, Ohio, on this 21st
13 day of July, 2006.

14

Leanne Garro, Notary Public
in and for the State of Ohio.
My commission expires March 6, 2009.

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